

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

GEOFFREY GRAY, AARON MILLER,
ADAM BOGLE, ANDRE LYLE,
BENJAMIN WHEELER, BLAINE
SCHIESS, BOBBY DEAN, BRADLEY
SAWAYA, CASEY BURNS, CAITLYN
LOMEN-CARR, CHRISTODOULOS
PANERIS, DANIEL HJELMESETH,
DAVID LAWTON, DEBORAH
FLETCHER, DONNA TEGNELL, DYLAN
BECKNER, ERIC HANSEN, GARY
GORDON, JAMES HOWARD, JANA
CRAWFORD, JAY SARVER, JEREMY
BIRCHFIELD, JEREMY GREENE, JOE
DEGROAT, JOHN WINSTON, JORDAN
LONGACRE, JOSEPH GREENE, JUSTIN
COCHRAN, KERRY STRAWN, LARRY
FROSTAD, LYNN NOWELS,
MERRIEGRACE LA PIERRE, MICHAEL
BROWN, MICHAEL URIBE, MICHAEL
WATKINS, NATHAN KESLER,
NICHOLAS AUCKLAND, NICOLE
PREZIOSI, PETER DUNCAN, RICHARD
OSTRANDER, ROBERT
WASHABAUGH, RODNEY PELHAM,
RONALD VESSEY, RYAN EUBANK,
SCOTT SCHUTT, SEAN MORGAN,
SHANE TAYLOR, SHASTA ATKINS,
SHERI FERGUSON, SOMMER
BECKNER, STACY KATYRYNIUK,

CASE NO. 3:23-cv-05418

COMPLAINT

JURY DEMANDED

COMPLAINT

1

ARNOLD & JACOBOWITZ PLLC
8201 164th Avenue NE, Suite 200
Redmond, WA 98052
(206) 799-4221

STEPHEN AUSTIN, STEVE TURCOTT,
STEVE WALKER, TERRY DUNN, TODD
HUMPHREYS, TYLER RATKIE,
WENDY PUNCH, WILLIAM DUBOSE,
VICTORIA GARDNER,

Plaintiffs,

v.

WASHINGTON STATE DEPARTMENT
OF TRANSPORTATION, a government
agency, ROGER MILLAR, an individual,
JEFF PELTON, an individual, MARK
NITCHMAN, an individual, KIMBERLY
MONROE FLAIG, an individual.

Defendants.

I. INTRODUCTION

1. Plaintiffs are 60 State employees who were wrongfully denied accommodations and terminated for non-compliance with a new State requirement for COVID-19 vaccination, in violation of their Constitutional and statutory rights. Plaintiffs come to this Court to be made whole.

II. PARTIES

2. Defendant Washington State Department of Transportation (WSDOT) is a governmental agency of the State of Washington.
3. Defendant Roger Millar is Secretary of Transportation, WSDOT, and is an employer, officer, vice principal and/or agent for purposes of Wash. Rev. Code § 49.52.070; upon information and belief, Defendant Millar performed the acts and omissions complained

1 of herein to advance his career and/or for the personal benefit and the benefit of his
2 marital community.

3 4. Defendant Jeff Pelton is Human Resources Director, WSDOT, and is an employer,
4 officer, vice principal and/or agent for purposes of Wash. Rev. Code § 49.52.070; upon
5 information and belief, Defendant Pelton performed the acts and omissions complained
6 of herein to advance his career and/or for the personal benefit and the benefit of his
7 marital community.
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9 5. Defendant Kimberly Monroe Flaig, is Deputy Director of Human Resources, WSDOT,
10 and is an employer, officer, vice principal and/or agent for purposes of Wash. Rev. Code
11 § 49.52.070; upon information and belief, Defendant Flaig performed the acts and
12 omissions complained of herein to advance her career and/or for the personal benefit and
13 the benefit of her marital community.
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15 6. Defendant Mark Nitchman is Staff Chief Engineer, WSDOT, Washington State Ferries
16 (WSF) and is an employer, officer, vice principal and/or agent for purposes of Wash.
17 Rev. Code § 49.52.070; upon information and belief, Defendant Nitchman performed the
18 acts and omissions complained of herein to advance his career and/or for the personal
19 benefit and the benefit of his marital community.
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21 7. Plaintiff Geoffrey Gray was a Region Biologist with the Environmental Department,
22 South Central Region HQ at WSDOT, who during employment with the Department was
23 a resident of Washington State. Mr. Gray was granted a religious exemption but was
24 denied an accommodation and was terminated on or about October 18, 2021. Plaintiff
25 Gray teleworked throughout the pandemic and was able to perform his work 100%
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1 remotely. Defendants did not perform an interactive dialogue with Mr. Gray and
2 identified no undue hardship the agency would have suffered if an accommodation had
3 been provided. Mr. Gray's supervisor supported accommodating Plaintiff through 100%
4 telework.

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6 8. Plaintiff Steve Turcott was the Eastern Washington Emergency Manager with
7 Headquarters Maintenance assigned to the three regions in Eastern Washington at
8 WSDOT, who during employment with the Department was a resident of Washington
9 State. Mr. Turcott was granted a religious exemption but was denied an accommodation
10 and was terminated on or about October 18, 2021. Plaintiff Turcott teleworked
11 throughout the pandemic and was able to perform his work 100% remotely. Mr. Turcott
12 also had demonstrated and documented natural immunity. Defendants did not perform
13 an interactive dialogue with Mr. Turcott and identified no undue hardship the agency
14 would have suffered if an accommodation had been provided. Following his termination,
15 Mr. Turcott's position was advertised as full-time telework.

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17 9. Plaintiff Aaron Miller was a Maintenance Technician 2 with the Maintenance
18 Department of North Central Region HQ at WSDOT, who during employment with the
19 Department was a resident of Washington State. Mr. Miller was granted a religious
20 exemption but was denied an accommodation and was terminated on or about October
21 18, 2021. Plaintiff Miller worked exclusively outdoors operating a snowplow.
22 Defendants did not perform an interactive dialogue with Mr. Miller and identified no
23 undue hardship the agency would have suffered if an accommodation had been provided.
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- 1 10. Plaintiff Adam Bogle was a Ferry Operator Assistant with the Ferries Department (Keller
2 Ferry Facility) at WSDOT, who during employment with the Department was a resident
3 of Washington State. Mr. Bogle was granted a religious exemption but was denied an
4 accommodation and was terminated on or about October 18, 2021. Plaintiff Bogle
5 worked exclusively outdoors. Defendants did not perform an interactive dialogue with
6 Mr. Bogle and identified no undue hardship the agency would have suffered if an
7 accommodation had been provided.
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- 9 11. Plaintiff Andre Lyle was an Oiler with the Ferries Department (M/V Chetzemoka) at
10 WSDOT, who during employment with the Department was a resident of Washington
11 State. Mr. Lyle was granted a religious exemption but was denied an accommodation and
12 was terminated on or about October 18, 2021. Defendants did not perform an interactive
13 dialogue with Mr. Lyle and identified no undue hardship the agency would have suffered
14 if an accommodation had been provided. Mr. Lyle also had demonstrated and
15 documented natural immunity against COVID-19.
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- 17 12. Plaintiff Benjamin Wheeler was a Bridge Maintenance Specialist 2 with the Maintenance
18 Department (Everett Bridge Office) at WSDOT, who during employment with the
19 Department was a resident of Washington State. Mr. Wheeler was granted a religious
20 exemption but was denied an accommodation and was terminated on or about October
21 18, 2021. Plaintiff Wheeler worked primarily outdoors, and occasionally worked
22 remotely even prior to the pandemic. Defendants did not perform an interactive dialogue
23 with Mr. Wheeler and identified no undue hardship the agency would have suffered if an
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1 accommodation had been provided. Mr. Wheeler also had demonstrated and documented
2 natural immunity against COVID-19.

3 13. Plaintiff Blaine Schiess was a Transportation Engineer II with the Engineering
4 Department (Port Angeles Engineer Office) at WSDOT, who during employment with
5 the Department was a resident of Washington State. Mr. Schiess was granted a religious
6 exemption but was denied an accommodation and was terminated on or about October
7 18, 2021. Plaintiff Schiess worked primarily outdoors. Defendants did not perform an
8 interactive dialogue with Mr. Schiess and identified no undue hardship the agency would
9 have suffered if an accommodation had been provided.
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11 14. Plaintiff Bobby Dean was a Highway Maintenance Worker 2 with Maintenance
12 Department (Goldendale Shed) at WSDOT, who during employment with the
13 Department was a resident of Washington State. Mr. Dean was granted a medical
14 exemption but was denied an accommodation and was terminated on or about October
15 18, 2021. Plaintiff Dean worked exclusively outdoors. Defendants did not perform an
16 interactive dialogue with Mr. Dean and identified no undue hardship the agency would
17 have suffered if an accommodation had been provided. Plaintiff Dean also had
18 demonstrated and documented natural immunity against COVID-19.
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20 15. Plaintiff Bradley Sawaya was an Able-bodied Seaman, Bosman with the Ferries
21 Department (M/V Tillikum) at WSDOT, who during employment with the Department
22 was a resident of Washington State. Mr. Sawaya was granted a religious exemption but
23 was denied an accommodation and was terminated on or about October 18, 2021.
24 Plaintiff Sawaya worked outdoors. Defendants did not perform an interactive dialogue
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1 with Mr. Sawaya and identified no undue hardship the agency would have suffered if an
2 accommodation had been provided.

3 16. Plaintiff Casey Burns was a Bridge Maintenance Specialist 2 with the Maintenance
4 Department (Union Gap) at WSDOT, who during employment with the Department was
5 a resident of Washington State. Mr. Burns was granted a religious exemption but was
6 denied an accommodation and was terminated on or about October 18, 2021. Plaintiff
7 Burns worked exclusively outdoors. Defendants did not perform an interactive dialogue
8 with Mr. Burns and identified no undue hardship the agency would have suffered if an
9 accommodation had been provided. Plaintiff Burns also had demonstrated and
10 documented natural immunity against COVID-19.

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12 17. Plaintiff Caitlyn Lomen-Carr was a Highway Maintenance Worker 3 with the
13 Maintenance Department (Colfax Shed) at WSDOT, who during employment with the
14 Department was a resident of Washington State. Ms. Lomen-Carr was granted a religious
15 exemption but was denied an accommodation and was terminated on or about October
16 18, 2021. Plaintiff Lomen-Carr worked primarily outdoors. Defendants did not perform
17 an interactive dialogue with Ms. Lomen-Carr and identified no undue hardship the
18 agency would have suffered if an accommodation had been provided.

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20 18. Plaintiff Christodoulos Paneris was a Permanent Oiler with the Ferries Department (M/V
21 Chimacum) at WSDOT, who during employment with the Department was a resident of
22 Washington State. Mr. Paneris was granted a religious exemption but was denied an
23 accommodation and was terminated on or about October 18, 2021. Defendants did not
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perform an interactive dialogue with Mr. Paneris and identified no undue hardship the agency would have suffered if an accommodation had been provided.

19. Plaintiff Daniel Hjelmeseth was a Transportation Engineer 3 with the Design/Construction Department at WSDOT, who during employment with the Department was a resident of Washington State. Mr. Hjelmeseth was granted a religious exemption but was denied an accommodation and was terminated on or about October 18, 2021. Defendants did not perform an interactive dialogue with Mr. Hjelmeseth and identified no undue hardship the agency would have suffered if an accommodation had been provided.

20. Plaintiff David Lawton was a WSF Vessel Captain with the Ferries Department at WSDOT, who during employment with the Department was a resident of Washington State. Mr. Lawton was granted a religious exemption but was denied an accommodation and was terminated on or about October 18, 2021. Plaintiff Lawton worked primarily alone. Defendants did not perform an interactive dialogue with Mr. Lawton and identified no undue hardship the agency would have suffered if an accommodation had been provided.

21. Plaintiff Deborah Fletcher was a Secretary Senior with Engineering Department at WSDOT, who during employment with the Department was a resident of Washington State. Ms. Fletcher was granted a religious exemption but was denied an accommodation and was terminated on or about October 18, 2021. Defendants did not perform an interactive dialogue with Ms. Fletcher and identified no undue hardship the agency would

1 have suffered if an accommodation had been provided. Plaintiff Fletcher also had
2 demonstrated and documented natural immunity against COVID-19.

3 22. Plaintiff Donna Tegnell was a Chief Mate with the Ferries Department (M/V Tillikum)
4 at WSDOT, who during employment with the Department was a resident of Washington
5 State. Ms. Tegnell was granted a religious exemption but was denied an accommodation
6 and was terminated on or about October 18, 2021. Defendants did not perform an
7 interactive dialogue with Ms. Tegnell and identified no undue hardship the agency would
8 have suffered if an accommodation had been provided.

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10 23. Plaintiff Dylan Beckner was a Ferries/Terminal Attendant with the Ferries Department
11 (Bremerton Dock) at WSDOT, who during employment with the Department was a
12 resident of Washington State. Mr. Beckner was granted a religious exemption but was
13 denied an accommodation and was terminated on or about October 18, 2021. Plaintiff
14 Beckner worked primarily outdoors. Defendants did not perform an interactive dialogue
15 with Mr. Beckner and identified no undue hardship the agency would have suffered if an
16 accommodation had been provided.

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18 24. Plaintiff Eric Hansen was a Vacation Relief Chief Engineer with the Ferries Department
19 at WSDOT, who during employment with the Department was a resident of Washington
20 State. Mr. Hansen was granted a religious exemption but was denied an accommodation
21 and was terminated on or about October 18, 2021. Defendants did not perform an
22 interactive dialogue with Mr. Hansen and identified no undue hardship the agency would
23 have suffered if an accommodation had been provided. Plaintiff Hansen also had
24 demonstrated and documented natural immunity against COVID-19.
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1 25. Plaintiff Gary Gordon was a Maintenance Technician 2 with the Maintenance
2 Department (South Central Region) at WSDOT, who during employment with the
3 Department was a resident of Washington State. Mr. Gordon was granted a religious
4 exemption but was denied an accommodation and was terminated on or about October
5 18, 2021. Defendants did not perform an interactive dialogue with Mr. Gordon and
6 identified no undue hardship the agency would have suffered if an accommodation had
7 been provided.
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9 26. Plaintiff James Howard was a Carpenter Shop Lead Person with the Ferries Department
10 (Marine Division) at WSDOT, who during employment with the Department was a
11 resident of Washington State. Mr. Howard was granted a religious exemption but was
12 denied an accommodation and was terminated on or about October 18, 2021. Plaintiff
13 Howard worked primarily outdoors. Defendants did not perform an interactive dialogue
14 with Mr. Howard and identified no undue hardship the agency would have suffered if an
15 accommodation had been provided.
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17 27. Plaintiff Jana Crawford was a Stormwater Branch Manager with the Environmental
18 Services Office (Headquarters) at WSDOT, who during employment with the
19 Department was a resident of Washington State. Ms. Crawford was granted a religious
20 exemption but was denied an accommodation and was terminated on or about October
21 18, 2021. Plaintiff Crawford successfully teleworked prior to the pandemic and was able
22 to perform her work 100% remotely. Defendants filled Ms. Crawford's position with a
23 full-time telework employee who did not even have stormwater experience. Defendants
24 did not perform an interactive dialogue with Ms. Crawford and identified no undue
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1 hardship the agency would have suffered if an accommodation had been provided.
2 Plaintiff Crawford also had demonstrated and documented natural immunity against
3 COVID-19.

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5 28. Plaintiff Jay Sarver was an Oiler with the Ferries Department (M/V Salish) at WSDOT,
6 who during employment with the Department was a resident of Washington State. Mr.
7 Sarver was granted a religious exemption but was denied an accommodation and was
8 terminated on or about October 18, 2021. Plaintiff Sarver worked outdoors. Defendants
9 did not perform an interactive dialogue with Mr. Sarver and identified no undue hardship
10 the agency would have suffered if an accommodation had been provided.

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12 29. Plaintiff Jeremy Birchfield was a Ferries Oiler with the Ferries Department (M/V Salish)
13 at WSDOT, who during employment with the Department was a resident of Washington
14 State. Mr. Birchfield was granted a religious exemption but was denied an
15 accommodation and was terminated on or about October 18, 2021. Defendants did not
16 perform an interactive dialogue with Mr. Birchfield and identified no undue hardship the
17 agency would have suffered if an accommodation had been provided. Plaintiff Birchfield
18 also had demonstrated and documented natural immunity against COVID-19.

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20 30. Plaintiff Jeremy Greene was a Relief Chief Engineer with the Ferries Department at
21 WSDOT, who during employment with the Department was a resident of Washington
22 State. Mr. Greene was granted a religious exemption but was denied an accommodation
23 and was terminated on or about October 18, 2021. Defendants did not perform an
24 interactive dialogue with Mr. Greene and identified no undue hardship the agency would
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1 have suffered if an accommodation had been provided. Plaintiff Greene also had
2 demonstrated and documented natural immunity against COVID-19.

3 31. Plaintiff Joe DeGroat was a Transportation Engineer 3 with the Traffic Division (South
4 Central Region HQ) at WSDOT, who during employment with the Department was a
5 resident of Washington State. Mr. DeGroat was granted a religious exemption but was
6 denied an accommodation and was terminated on or about October 18, 2021. Plaintiff
7 DeGroat teleworked throughout the pandemic and was able to perform his work 100%
8 remotely. Defendants did not perform an interactive dialogue with Mr. DeGroat and
9 identified no undue hardship the agency would have suffered if an accommodation had
10 been provided. Plaintiff DeGroat also had demonstrated and documented natural
11 immunity against COVID-19.

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14 32. Plaintiff John Winston was a Marine Pipefitter with the Ferries Department (Eagle
15 Harbor Maintenance Facility) at WSDOT, who during employment with the Department
16 was a resident of Washington State. Mr. Winston was granted a religious exemption but
17 was denied an accommodation and was terminated on or about October 18, 2021.
18 Defendants did not perform an interactive dialogue with Mr. Winston and identified no
19 undue hardship the agency would have suffered if an accommodation had been provided.

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21 33. Plaintiff Jordan Longacre was a Communications Consultant with the Communications
22 Division at WSDOT, who during employment with the Department was a resident of
23 Washington State. Mr. Longacre was granted a religious exemption but was denied an
24 accommodation and was terminated on or about October 18, 2021. Plaintiff Longacre
25 teleworked throughout the pandemic and was able to perform his work 100% remotely.
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1 Defendants did not perform an interactive dialogue with Mr. Longacre and identified no
2 undue hardship the agency would have suffered if an accommodation had been provided.
3 Plaintiff Longacre also had demonstrated and documented natural immunity against
4 COVID-19.

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6 34. Plaintiff Joseph Greene was an Assistant Engineer with the Ferries Department (Mukilteo
7 Run) at WSDOT, who during employment with the Department was a resident of
8 Washington State. Mr. Greene was granted a religious exemption but was denied an
9 accommodation and was terminated on or about October 18, 2021. Defendants did not
10 perform an interactive dialogue with Mr. Greene and identified no undue hardship the
11 agency would have suffered if an accommodation had been provided. Plaintiff Greene
12 also had demonstrated and documented natural immunity against COVID-19.

13
14 35. Plaintiff Justin Cochran was a Chief Engineer with the Ferries Department (South Worth
15 Ferry) at WSDOT, who during employment with the Department was a resident of
16 Washington State. Mr. Cochran was granted a religious exemption but was denied an
17 accommodation and was terminated on or about October 18, 2021. Defendants did not
18 perform an interactive dialogue with Mr. Cochran and identified no undue hardship the
19 agency would have suffered if an accommodation had been provided.

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21 36. Plaintiff Kerry Strawn was a Highway Maintenance Worker 2 with the Maintenance
22 Department (Pasco) at WSDOT, who during employment with the Department was a
23 resident of Washington State. Mr. Kerry was granted a religious exemption but was
24 denied an accommodation and was terminated on or about October 18, 2021. Plaintiff
25 Strawn worked primarily outdoors. Defendants did not perform an interactive dialogue
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1 with Mr. Strawn and identified no undue hardship the agency would have suffered if an
2 accommodation had been provided.

3 37. Plaintiff Larry Frostad was an East Region Traffic Design & Operations Engineer with
4 Spokane Region Office at WSDOT, who during employment with the Department was a
5 resident of Washington State. Mr. Frostad was granted a religious exemption but was
6 denied an accommodation and was terminated on or about October 18, 2021. Defendants
7 did not perform an interactive dialogue with Mr. Frostad and identified no undue
8 hardship the agency would have suffered if an accommodation had been provided.

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10 38. Plaintiff Lynn Nowels was a Fiscal Specialist Supervisor with the Maintenance
11 Department at WSDOT, who during employment with the Department was a resident of
12 Washington State. Ms. Nowels was granted a religious exemption but was denied an
13 accommodation and was terminated on or about October 18, 2021. Defendants did not
14 perform an interactive dialogue with Ms. Nowels and identified no undue hardship the
15 agency would have suffered if an accommodation had been provided. Plaintiff Nowels
16 also had demonstrated and documented natural immunity against COVID-19.

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18 39. Plaintiff Merriegrace LaPierre was a Terminal Attendant with the Ferries Department
19 (Anacortes) at WSDOT, who during employment with the Department was a resident of
20 Washington State. Ms. LaPierre was granted a religious exemption but was denied an
21 accommodation and was terminated on or about October 18, 2021. Plaintiff worked
22 primarily outdoors. Defendants did not perform an interactive dialogue with Ms. LaPierre
23 and identified no undue hardship the agency would have suffered if an accommodation
24 had been provided.
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1 40. Plaintiff Michael Brown was a Transportation Engineer 3 with Design/Construction
2 Division at WSDOT, who during employment with the Department was a resident of
3 Washington State. Mr. Brown was granted a religious exemption but was denied an
4 accommodation and was terminated on or about October 18, 2021. Defendants did not
5 perform an interactive dialogue with Mr. Brown and identified no undue hardship the
6 agency would have suffered if an accommodation had been provided.
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8 41. Plaintiff Michael Uribe was a Highway Maintenance Worker 3 with the Maintenance
9 Department at WSDOT, who during employment with the Department was a resident of
10 Washington State. Mr. Uribe was granted a religious exemption but was denied an
11 accommodation and was terminated on or about October 18, 2021. Plaintiff Uribe
12 worked primarily outdoors. Defendants did not perform an interactive dialogue with Mr.
13 Uribe and identified no undue hardship the agency would have suffered if an
14 accommodation had been provided.
15

16 42. Plaintiff Michael Watkins was an Engine Room Oiler with the Ferries Department at
17 WSDOT, who during employment with the Department was a resident of Washington
18 State. Mr. Watkins was granted a religious exemption but was denied an accommodation
19 and was terminated on or about October 18, 2021. Defendants did not perform an
20 interactive dialogue with Mr. Watkins and identified no undue hardship the agency would
21 have suffered if an accommodation had been provided.
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23 43. Plaintiff Nathan Kesler was an Engineer with the Ferries Department at WSDOT, who
24 during employment with the Department was a resident of Washington State. Mr. Kesler
25 was granted a religious exemption but was denied an accommodation and was terminated
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1 on or about October 18, 2021. Defendants did not perform an interactive dialogue with
2 Mr. Kesler and identified no undue hardship the agency would have suffered if an
3 accommodation had been provided.

4 44. Plaintiff Nicholas Auckland was a Signals Maintenance with the Northwest Region
5 Traffic Office at WSDOT, who during employment with the Department was a resident
6 of Washington State. Mr. Auckland was terminated on or about October 18, 2021.
7 Plaintiff Auckland was told that seeking a religious exemption or accommodation was
8 pointless, as it would not be granted, and the form used to request an exemption led him
9 to believe he did not qualify. Defendants did not perform an interactive dialogue with
10 Mr. Auckland and identified no undue hardship the agency would have suffered if an
11 accommodation had been provided.
12

13 45. Plaintiff Nicole Preziosi was an Engine Room Oiler with the Ferries Department (Seattle)
14 at WSDOT, who during employment with the Department was a resident of Washington
15 State. Ms. Preziosi was granted a religious exemption but was denied an accommodation
16 and was terminated on or about October 18, 2021. Defendants did not perform an
17 interactive dialogue with Ms. Preziosi and identified no undue hardship the agency would
18 have suffered if an accommodation had been provided.
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20 46. Plaintiff Peter Duncan was an Oiler/Assistant Engineer with the Ferries Department
21 (Seattle) at WSDOT, who during employment with the Department was a resident of
22 Washington State. Mr. Duncan was granted a religious exemption but was denied an
23 accommodation and was terminated on or about October 18, 2021. Defendants did not
24 perform an interactive dialogue with Mr. Duncan and identified no undue hardship the
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1 agency would have suffered if an accommodation had been provided. Plaintiff Duncan
2 also had demonstrated and documented natural immunity against COVID-19.

3 47. Plaintiff Richard Ostrander was a Maintenance Technician 2 with the Incident Response
4 Team at WSDOT, who during employment with the Department was a resident of
5 Washington State. Mr. Ostrander was denied a religious exemption and was terminated
6 on or about October 18, 2021. Plaintiff Ostrander worked exclusively outdoors. Because
7 Defendants wrongfully denied Mr. Ostrander's religious exemption, Defendants never
8 performed an interactive dialogue with Mr. Ostrander to identify an undue hardship the
9 agency would have suffered if an accommodation had been provided. Plaintiff Ostrander
10 also had demonstrated and documented natural immunity against COVID-19.

11 48. Plaintiff Robert Washabaugh was an Assistant Project Engineer with the Development
12 Branch Project Office (Union Gap) at WSDOT, who during employment with the
13 Department was a resident of Washington State. Mr. Washabaugh was granted a religious
14 exemption but was denied an accommodation and was terminated on or about October
15 18, 2021. Defendants did not perform an interactive dialogue with Mr. Washabaugh and
16 identified no undue hardship the agency would have suffered if an accommodation had
17 been provided. Plaintiff Washabaugh also had demonstrated and documented natural
18 immunity against COVID-19.

19 49. Plaintiff Rodney Pelham was a Highway Maintenance Worker 2 with the Maintenance
20 Department (Discovery Bay) at WSDOT, who during employment with the Department
21 was a resident of Washington State. Plaintiff Pelham was told that seeking a religious
22 exemption or accommodation was pointless, as it would not be granted, and the form
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1 used to request an exemption led him to believe he did not qualify. Mr. Pelham was
2 terminated on or about October 18, 2021. Plaintiff Pelham worked primarily outdoors.

3 50. Plaintiff Ronald Vessey was an ITS Operations Engineer and acting Director of Traffic
4 Operations at WSDOT Headquarters (Olympia), who during employment with the
5 Department was a resident of Washington State. Mr. Vassey was granted a religious
6 exemption but was denied an accommodation and was terminated on or about October
7 18, 2021. Plaintiff Vessey teleworked throughout the pandemic and was able to perform
8 his work 100% remotely. Defendants did not perform an interactive dialogue with Mr.
9 Vessey and identified no undue hardship the agency would have suffered if an
10 accommodation had been provided. Plaintiff Vessey also had demonstrated and
11 documented natural immunity against COVID-19.
12

13 51. Plaintiff Ryan Eubank was an On-call Oiler with the Ferries Department at WSDOT,
14 who during employment with the Department was a resident of Washington State. Mr.
15 Eubank was granted a religious exemption but was denied an accommodation and was
16 terminated on or about October 18, 2021. Defendants did not perform an interactive
17 dialogue with Mr. Eubank and identified no undue hardship the agency would have
18 suffered if an accommodation had been provided.
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20 52. Plaintiff Scott Schutt was a Maintenance Specialist 3 with the Maintenance Department
21 (Moses Lake) at WSDOT, who during employment with the Department was a resident
22 of Washington State. Mr. Schutt was granted a religious exemption but was denied an
23 accommodation and was terminated on or about October 18, 2021. Defendants did not
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perform an interactive dialogue with Mr. Schutt and identified no undue hardship the agency would have suffered if an accommodation had been provided.

53. Plaintiff Sean Morgan was a Chief Engineer with the Ferries Department (Seattle) at WSDOT, who during employment with the Department was a resident of Washington State. Mr. Morgan was granted a religious exemption but was denied an accommodation and was terminated on or about October 18, 2021. Defendants did not perform an interactive dialogue with Mr. Morgan and identified no undue hardship the agency would have suffered if an accommodation had been provided.

54. Plaintiff Shane Taylor was a Highway Maintenance Worker 2 with the Maintenance Department (Toppenish) at WSDOT, who during employment with the Department was a resident of Washington State. Mr. Taylor was granted a medical exemption but was denied an accommodation and was terminated on or about October 18, 2021. Plaintiff Taylor worked exclusively outdoors. Defendants did not perform an interactive dialogue with Mr. Taylor and identified no undue hardship the agency would have suffered if an accommodation had been provided.

55. Plaintiff Shasta Atkins was a Bridge Engineer 1 with Bridge & Structures Office (Tumwater) at WSDOT, who during employment with the Department was a resident of Washington State. Ms. Atkins was granted a religious exemption but was denied an accommodation and was terminated on or about October 18, 2021. Plaintiff Atkins teleworked prior and throughout the pandemic and was able to perform her work 100% remotely. Defendants did not perform an interactive dialogue with Ms. Atkins and

1 identified no undue hardship the agency would have suffered if an accommodation had
2 been provided.

3 56. Plaintiff Sheri Ferguson was a Ferry Terminal Attendant with the Ferries Department
4 (Port Orchard) at WSDOT, who during employment with the Department was a resident
5 of Washington State. Ms. Ferguson was granted a religious exemption but was denied an
6 accommodation and was terminated on or about October 18, 2021. Defendants did not
7 perform an interactive dialogue with Ms. Ferguson and identified no undue hardship the
8 agency would have suffered if an accommodation had been provided. Plaintiff Ferguson
9 also had demonstrated and documented natural immunity against COVID-19.
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11 57. Plaintiff Sommer Beckner was a Ferry Terminal Attendant with the Ferries Department
12 (Bremerton) at WSDOT, who during employment with the Department was a resident of
13 Washington State. Mr. Beckner was granted a religious exemption but was denied an
14 accommodation and was terminated on or about October 18, 2021. Plaintiff Beckner
15 worked primarily outdoors. Defendants did not perform an interactive dialogue with Mr.
16 Beckner and identified no undue hardship the agency would have suffered if an
17 accommodation had been provided.
18

19 58. Plaintiff Stacy Katryniuk was a Highway Maintenance Supervisor with the
20 Maintenance Department at WSDOT, who during employment with the Department was
21 a resident of Washington State. Plaintiff Katryniuk was told that seeking a religious
22 exemption or accommodation was pointless, as it would not be granted, and the form
23 used to request an exemption led her to believe she did not qualify. Ms. Katryniuk was
24 terminated on or about October 18, 2021. Defendants did not perform an interactive
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1 dialogue with Ms. Katrynuik and identified no undue hardship the agency would have
2 suffered if an accommodation had been provided. Plaintiff Katrynuik also had
3 demonstrated and documented natural immunity against COVID-19.

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5 59. Plaintiff Stephen Austin was a Transportation Planning Specialist 4 (Historian) with the
6 Cultural Resources Program (Olympia) at WSDOT, who during employment with the
7 Department was a resident of Washington State. Mr. Austin was granted both medical
8 and religious exemptions but was denied an accommodation and was terminated on or
9 about October 18, 2021. Plaintiff Austin teleworked throughout the pandemic and was
10 able to perform his work 100% remotely. Defendants did not perform an interactive
11 dialogue with Mr. Austin and identified no undue hardship the agency would have
12 suffered if an accommodation had been provided.

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14 60. Plaintiff Steve Walker was a Transportation Technician 3 – Traffic Engineering with the
15 Traffic Division (Union Gap) at WSDOT, who during employment with the Department
16 was a resident of Washington State. Mr. Walker was granted a religious exemption but
17 was denied an accommodation and was terminated on or about October 18, 2021.
18 Defendants did not perform an interactive dialogue with Mr. Walker and identified no
19 undue hardship the agency would have suffered if an accommodation had been provided.

20
21 61. Plaintiff Terry Dunn was an Engineer 2 (Utilities Permit Engineer) at WSDOT, who
22 during employment with the Department was a resident of Washington State. Mr. Dunn
23 was granted a religious exemption but was denied an accommodation and was terminated
24 on or about October 18, 2021. Defendants did not perform an interactive dialogue with
25
26

1 Mr. Dunn and identified no undue hardship the agency would have suffered if an
2 accommodation had been provided.

3 62. Plaintiff Todd Humphreys was a Transportation Technician 2 with Tom Brash's
4 Engineering Office (Spokane) at WSDOT, who during employment with the Department
5 was a resident of Washington State. Plaintiff Humphreys was told that seeking a religious
6 exemption or accommodation was pointless, as it would not be granted, and the form
7 used to request an exemption led him to believe he did not qualify. Mr. Humphreys was
8 forced to retire on or about October 18, 2021.

10 63. Plaintiff Tyler Ratkie was a Highway Maintenance Technician (Naselle) at WSDOT,
11 who during employment with the Department was a resident of Washington State. Mr.
12 Ratkie was granted a religious exemption but was denied an accommodation and was
13 terminated on or about October 18, 2021. Defendants did not perform an interactive
14 dialogue with Mr. Ratkie and identified no undue hardship the agency would have
15 suffered if an accommodation had been provided. Plaintiff Ratkie also had demonstrated
16 and documented natural immunity against COVID-19.

18 64. Plaintiff Wendy Punch was a Construction Inspector/Designer (Chehalis) at WSDOT,
19 who during employment with the Department was a resident of Washington State. Ms.
20 Punch was told that seeking a religious exemption or accommodation was pointless, as
21 it would not be granted, and the form used to request an exemption led him to believe he
22 did not qualify. Ms. Punch was terminated on or about October 18, 2021. Plaintiff Punch
23 teleworked throughout the pandemic and was able to perform majority of her work
24 remotely.
25

1 65. Plaintiff William DuBose was an Engine Room Operator with the Ferries Department
 2 (Seattle) at WSDOT, who during employment with the Department was a resident of
 3 Washington State. Mr. DuBose was granted a religious exemption but was denied an
 4 accommodation and was forced to retire early on or about November 15, 2021.
 5 Defendants did not perform an interactive dialogue with Mr. DuBose and identified no
 6 undue hardship the agency would have suffered if an accommodation had been provided.
 7

8 66. Plaintiff Victoria Gardner was a Transportation Engineer 2 with the
 9 Environmental/Design Office (Spokane) at WSDOT, who during employment with the
 10 Department was a resident of Washington State. Ms. Gardner was granted a religious
 11 exemption but was denied an accommodation and was terminated on or about October
 12 18, 2021. Plaintiff Gardner teleworked prior and throughout the pandemic and was able
 13 to perform her work 100% remotely. Defendants did not perform an interactive dialogue
 14 with Ms. Gardner and identified no undue hardship the agency would have suffered if an
 15 accommodation had been provided.
 16

17 67. All Plaintiffs have filed tort claims against the State and sixty calendar days have elapsed
 18 since the claims were first presented. Wash. Rev. Code § 4.92.110, § 4.96.020(4).
 19

20 **III. JURISDICTION AND VENUE**

21 68. The Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 & 1343.

22 69. Venue is proper in this Court under 28 U.S.C. § 1391 where the Department is
 23 headquartered within this District and Defendants reside therein.

24 70. In compliance with Wash. Rev. Code § 4.92.100, Plaintiffs have submitted Tort Claims
 25 with the Washington State Office of Risk Management; sixty days have passed since that
 26

1 submission, during which all statutes of limitations were tolled pursuant to Wash. Rev.
 2 Code § 4.92.110, § 4.96.020(4).

3 IV. FACTS

4 The Plaintiffs:

- 5 71. Plaintiffs were employed by the Department until they were wrongfully terminated¹ on
 6 or about October 18, 2021.²
- 7 72. Beginning in August 2021, each Plaintiff began submitting requests for religious and/or
 8 medical exemption from the Department's new employee vaccination requirement.³
- 9 73. For each Plaintiff, Defendants determined they had a sincerely held religious belief
 10 and/or a medical exemption that prevented vaccination.
- 11 74. For each Plaintiff, Defendants denied accommodation for their sincerely held religious
 12 belief and/or medical exemption and demanded vaccination as the only way to keep their
 13 employment.
- 14 75. For each Plaintiff, Defendants have admitted that they relied on printed job descriptions
 15 in lieu of personal dialogue in denying accommodation, a global accommodation denial
 16
 17
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 20

21 ¹ Plaintiffs Joe DeGroat, Ronald Vessey, Daniel Hjelmeseth, Todd Humphreys, and David Lawton were
 22 each prematurely forced into early retirement in lieu of termination.

23 ² Plaintiff Christodoulos Paneris was terminated on March 4, 2022, as he was on PFML, FMLA at the time
 24 the mandate took effect.

25 ³ Plaintiffs Stacy Katryniuk, Nicholas Auckland, Rodney Pelham, Todd Humphreys, and Wendy Punch
 26 did not file a religious or medical exemption, as each were specifically told that the process was futile and they
 would not be accommodated. These Plaintiffs also believed that they would not qualify for a religious exemption
 because the form Defendants required employees to complete to even request an exemption included asking the
 employee to confirm that they had never taken either a vaccine or a "medicine" from a physician in their adult life.
 The form Defendants required had an extraordinary chilling effect on individuals desiring to seek an exemption but
 believing based on the form provided that they would not qualify, *infra*. Exhibit A.

that did not entail an interactive dialogue with each Plaintiff as required by state and federal law and the language of Proclamation 21-14.

76. For most Plaintiffs, after submitting a request for a religious and/or medical exemption, they received the same form letter stating that their exemption was approved, but accommodation was denied. There was no dialogue or interaction between the Parties after a request for an exemption was submitted but before an accommodation was denied.

77. For each Plaintiff, Defendants refused discussing any accommodation suggestions, with continued demands that only vaccination would offer protection from the alleged threat Plaintiffs posed.

78. For most Plaintiffs, a notice of granting religious and/or medical exemption was included in the same letter that denied Plaintiff an accommodation.

79. For each Plaintiff, Defendants did not identify the undue burden they would have suffered had they accommodated Plaintiff.

80. As discussed more fully *infra*, Defendants ignored requests for *Loudermill* hearings or denied requests on the basis that it was not required for “non-disciplinary separation,” denied Plaintiffs’ requests to go on leave without pay until the emergency passed, denied Plaintiffs’ requests to take the Novavax vaccine once it became available, denied continued telework despite its success for 18 months, denied accommodation to outdoor workers, and rejected supervisory support for full telework accommodation.

COVID Vaccines:

81. During 2020, several experimental vaccines were developed to limit the effects of COVID-19.

1 82. By early to mid- 2021, prior to termination of Plaintiffs, it had become clear that the
2 COVID-19 vaccines developed by Pfizer, Moderna and Johnson & Johnson did not
3 prevent recipients from being infected with, or spreading, COVID-19.

4 83. Thus, unlike polio or smallpox vaccines, the COVID-19 vaccines did not eliminate
5 infection and could not end transmission of the virus.

6 84. Many studies confirmed this fact, including studies from the Centers for Disease Control
7 (CDC), upon whom Defendants allegedly relied.

8 85. The single benefit of the COVID-19 vaccine, as even the government admits, is to protect
9 an infected, vaccinated person from severe illness or death, but even that benefit is
10 disputed, and wanes over time to the extent it exists at all.

11 86. Plaintiffs were told by Defendants that that they posed a “significant risk of substantial
12 harm” in their unvaccinated state such that “no accommodation can be made in your
13 current position.” *See, e.g.*, Exhibit B, C, D. This language was repeated in virtually every
14 form letter sent by Defendants to deny accommodation to Plaintiffs.

15 87. In Position Statements to the EEOC, Defendants denied wrongful termination, claiming
16 “vaccination is critical to manage disease transmission.” Exhibit E, at 7. This was also
17 repeated in virtually every Position Statement.

18 88. Defendants also stated that “[t]here are no other accommodations for your position
19 available which sufficiently mitigate or *eliminate the risk* associated with having an
20 unvaccinated employee performing the *essential functions* of your position.” *Id.*
21 (emphasis added).
22
23
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1 89. Defendants did not identify the “significant risk of substantial harm” it would suffer
2 through accommodation.

3 90. Defendants provided no method of “eliminating the risk” of harm absent vaccination.

4 91. Defendants did not provide current scientific studies confirming that “vaccination is
5 critical to manage disease transmission,” but relied on generalities that were not in
6 keeping with latest data and statistics available to Defendants at the time.

7 92. At best, the studies were inconclusive and could not be the basis for terminating Plaintiffs
8 who had an exemption to receiving it.

9 93. Defendants contrived and imagined essential functions that were not essential, and also
10 listed public facing job functions that were not the responsibility of the Plaintiffs, *infra*.

11 94. Defendants did not comply with OFM guidance in determining essential job functions.

12 95. By OFM Guidance, a function is essential if: “1. The position exists to perform that
13 function. 2. There are a limited number of employees available who could perform that
14 function. 3. The function is highly specialized, and the incumbent is hired for special
15 expertise to perform it.” Exhibit F.

16 96. With respect to essential functions, “[t]he term does NOT include marginal functions of
17 the position.” Exhibit G, at 25 (emphasis in original).

18 97. Additionally, “[g]enerally essential functions are **WHAT** the complete task is, not **HOW**
19 the task is completed. An essential function must really be a function, not merely a way
20 of performing a function.” *Id.* at 26 (emphasis in original).

98. In reality, Defendants determined *any* task performed by an employee was “essential” that justified termination. Defendants never performed a “job analysis [to] help identify essential functions by determining which functions an employee actually performs,” *id.*

Breakthrough cases of COVID-19 in the fully vaccinated:

99. These vaccines were developed quickly to protect those who were at highest risk of getting seriously ill from COVID-19, especially the elderly and those with multiple comorbidities.⁴

100. Pfizer officials have admitted that its vaccine was not tested for efficacy at preventing transmission or infection, and the Food and Drug Administration likewise admitted that the vaccines were not licenses or authorized for prevention of infection or transmission, nor were clinical trials designed for such.⁵

101. It is now universally admitted that the vaccinated can contract and transmit COVID-19, though this data was readily available by Defendants prior to the termination of Plaintiffs.

102. A statement from the CDC Director Rochelle P. Walensky, MD, MPH, was issued and publicly available on the CDC site on July 30, 2021, before Washington Governor Jay Inslee’s Proclamation 21-14 *et seq.*, that stated, “...data were published in CDC’s Morbidity and Mortality Weekly Report (MMWR) demonstrating that Delta infection

⁴ Finding most deaths for COVID-19 occurred in nursing homes, and that the inferred median infection fatality rate in locations with a COVID-19 mortality rate lower than the global average is low (0.09%). “If one could sample equally from all locations globally, the median infection fatality rate might even be substantially lower than the 0.23% observed in my analysis.” <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7947934/pdf/BLT.20.265892.pdf> at 26.

⁵ Dr. Peter Marks, Director, Center for Biologics Evaluation and Research with the Food and Drug Administration, stated, “The vaccines are not licensed or authorized for prevention of infection with the SARS-CoV-2 virus or for prevention of transmission of the virus, nor were the clinical trials supporting the approvals and authorizations designed to assess whether the vaccines prevent infection or transmission of the virus.” <https://www.regulations.gov/document/FDA-2023-P-0360-0191>.

1 resulted in similarly high SARS-CoV-2 viral loads in vaccinated and unvaccinated
2 people. High viral loads suggest an increased risk of transmission and raised concern
3 that, unlike with other variants, **vaccinated people infected with Delta can transmit**
4 **the virus.”**

5
6 103. In a form letter sent to each Plaintiff terminating their employment, *see, e.g.*, Exhibits B
7 and D, WSDOT specifically mentioned the infection risk of the *Delta variant*, while also
8 allegedly relying on data from the CDC. This was not only a contradiction of the CDC
9 published data, but a direct misrepresentation of the available science and data at the
10 time.

11
12 104. Recorded “breakthrough” cases (fully vaccinated individuals contracting COVID-19) in
13 Washington State from July 17, 2021, to July 9, 2022, alone totaled 636,766, with a
14 majority of these breakthrough cases in the 20-49 years age group (74 percent). Exhibit
15 H. These cases do not represent infection in the typical vulnerable population.

16 105. The Department of Health (DOH) also published notice of rising breakthrough cases as
17 early as March 29, 2021, Exhibit I, nearly seven months prior to Plaintiffs’ terminations.

18 106. Defendants had specific knowledge of breakthrough cases prior to termination of
19 Plaintiffs.

20
21 107. The DOH held a question-and-answer session on August 17, 2021, where it was
22 acknowledged that the vaccine did not stop transmission.⁶

23
24
25

⁶ <https://www.youtube.com/watch?v=1nrLMsvGea8> (at 33:29-35:36).

1 108. A culture of fear and misinformation from Defendants, *infra*, led the workforce to believe
2 that the vaccinated were catching COVID-19 because of the unvaccinated, when, in fact,
3 the vaccinated were just as capable of transmission of and infection with COVID-19 as
4 the unvaccinated.

5
6 109. These misrepresentations from leadership caused Plaintiffs great distress and suffering
7 as they waited termination.

8 110. Defendant Millar was aware at this time that the vaccine did not prevent transmission.
9 WSDOT was involved in coordinating a question/answer video session with the State
10 Department of Health on August 17, 2021, to address concerns about the vaccine, where
11 DOH leaders confirmed that the vaccine did not stop transmission.⁷

12
13 111. The CDC also released a complete report of rising breakthrough cases in a report dated
14 August 13, 2021, Exhibit J, which was also recognized by the Washington State
15 Department of Health (DOH) in a news release acknowledging extensive breakthrough
16 cases as early on March 29, 2021. *Id.*

17 112. Many of the Plaintiffs have personal knowledge of co-workers who had been vaccinated
18 who reinfected with COVID-19 prior to termination. Plaintiffs brought this to the
19 attention of Defendants but were silenced.

20
21 113. On July 16, 2021, King County Public Health staff were notified of a staff party wherein
22 fully vaccinated individuals tested positive for COVID-19 after the staff party. Exhibit
23 K.

24
25
26 ⁷ <https://www.youtube.com/watch?v=1nrLMsvGea8>, (at 9:10-14:50).

- 1 114. Shortly thereafter, Jeffrey Duchin, Chief Communicable Disease Epidemiology and
2 Immunization Section, Public Health for Seattle and King County, and Professor of
3 Medicine, Division of Infectious Diseases, University of Washington, admitted that 37%
4 of new cases of COVID-19 were in vaccinated individuals. Exhibit L.
- 5
6 115. Dr. Duchin also acknowledged awareness of the well-publicized COVID-19 outbreak in
7 Provincetown, Massachusetts, after a Fourth of July celebration, where according to
8 Steve Katsurinis, Chair of the Provincetown Board of Health, 469 cases reported among
9 Massachusetts residents alone, 74 percent were in people who were fully immunized.
10 That number grew to 765 cases overall. Exhibit M.
- 11
12 116. Indeed, just prior to terminating Plaintiffs, the CDC released a report on or about
13 September 10, 2021, regarding a Norwegian Encore cruise ship returning to port in
14 Seattle because of a large outbreak of COVID-19 with approximately 118 cases, despite
15 its 100% vaccinated traveler status of both passengers and crew, as well as negative test
16 prior to boarding. Health officials recognized, “This is crazy. 118 cases. All vaccinated
17 and ALL tested negative prior to embarkation.” Exhibit N.
- 18
19 117. Dr. Duchin was also made aware that deaths were uncommon overall and the number of
20 deaths among cases is low, combined with the high likelihood that many fully vaccinated
21 individuals were not seeking testing due to mild or asymptomatic illness, therefore
22 increasing the proportions of the most severe outcomes. Exhibit O.
- 23
24 118. Defendants claim to have relied on data and studies from the CDC, DOH, King County
25 Health Department, and studies from the University of Washington, all of whom were
26

1 publishing studies regarding the failure of the vaccine to prevent infection and
2 transmission *prior to* Defendants terminating the Plaintiffs.

3 119. One of those studies included a study in September 2021, co-authored by both Dr.
4 Michael R. Sayre, medical director for Seattle Medic One and a physician in the
5 Emergency Department at Harborview Medical Center, as well as Medical Director for
6 the Seattle Fire Department, and Dr. Thomas Rea, medical director for King County
7 Medic One, two prominent health care advisors in the state of Washington, indicating
8 that even among first responders, “we observed a very low overall risk for COVID-19
9 infection among the EMS first responder workforce attributed to COVID-19 patient
10 encounters...” Exhibit P.
11

12 120. This calls into question Defendants’ narrative that vaccination was the only means
13 available to prevent death, transmission, or contraction of the virus.
14

15 121. Instead, “rates and relative risk provide a clearer picture,” Exhibit O, of virus
16 containment, which Defendants did not consider in its blanket policy that all exempt
17 employees must be vaccinated.

18 122. Situation Reports released by Defendants after Plaintiffs were terminated confirmed
19 Defendants’ knowledge of breakthrough cases. A December 2021 report revealed 474
20 positive cases of COVID-19 among their vaccinated staff. Exhibit Q. By January, the
21 infection rate among fully vaccinated staff included 611 positive COVID-19 cases.
22 Exhibit R.
23

24 123. The January 2022 Sitrep, *id.*, stated “[c]urrently WSDOT has 166 total people in isolation
25 or quarantine status. The highest we have had during the pandemic.”
26

Culture of shame and harassment:

124. Many of the Plaintiffs have personal knowledge of co-workers who had been vaccinated who then reinfected with COVID-19 prior to termination. Plaintiffs brought this to the attention of Defendants prior to termination but were silenced.

125. In fact, Plaintiffs were made to feel shamed and degraded for any science or facts presented to Defendants.

126. Defendant Millar, in an attempt to silence and shame those who brought forth these published studies, stated in a September 20, 2021, draft memo intended for all employees, “Some employees have shared information with me that disputes the State Department of Health (DOH) and the Centers for Disease Control (CDC) that they found while ‘doing their own research.’ [sic]. There is a lot of disinformation out there.” Exhibit S.

127. Defendant Millar does not identify what misinformation was presented, nor was he able to refute the studies that the DOH and CDC published that the vaccine did not stop transmission or infection.

128. These unsubstantiated statements from leadership fueled a culture of harassment and discrimination throughout the agency that was felt by Plaintiffs.

129. This culture of fear and harassment was particularly strong among WSF work crew, where Andy Lambert, Chief, Don Stewart, Staff Chief, Mark Nitchman, Staff Chief, and Don Stewart, Staff Chief, openly expressed fear of contracting COVID-19 from the unvaccinated and were openly hostile to unvaccinated employees, including some Plaintiffs. These individuals expressed hostility toward some Plaintiffs through openly stating that the unvaccinated were “stupid” and “irresponsible.”

1 130. Defendant Nitchman made it known through many public comments during work hours
2 that he did not want anyone on his boat who was unvaccinated.

3 131. In a social media post Defendant Nitchman stated, “I went to my boat today for technical
4 issues and found an oiler who refused to get vaccinated moving his gear off the ship.
5 Good to see him leaving, his presence jeopardizes us all and endangers my family. He is
6 gone, I am reasonably happy about it.” Exhibit T.

7
8 132. Defendant Nitchman likewise promulgated his own version of the science when asked
9 why he felt jeopardized by someone who was unvaccinated, given his vaccinated status,
10 to which he replied, “Because they can transmit thru me to others, because I have an
11 immune compromised family member living with me and because they incubate other
12 variants of the virus that may evolve to withstand vaccination. I don’t want them around
13 me.” Exhibit U. It is unclear what data he relied on to support his opinion that
14 unvaccinated were “incubat[ing] other variants of the virus that may evolve to withstand
15 vaccination.” *Id.*

16
17 133. Defendant Nitchman’s vocal bias and condemnation of the unvaccinated concerned
18 many but they were afraid to speak out against him. In 2008, a ferry worker
19 whistleblower identified Nitchman in a lawsuit claiming the whistleblower was retaliated
20 against by his bosses, including Mr. Nitchman, when the whistleblower complained
21 about paycheck adding and misuse of funds in his department. A jury awarded the
22 whistleblower \$2.8 million from the state. Exhibit V.

23
24 134. This culture of bias against the unvaccinated was promulgated by Defendants. For
25 example, in a September 20, 2021, draft memo, Defendant Millar failed to express
26

1 objectivity in his leadership position, but rather, fueled an emotionally charged
2 dissertation that was disrespectful of the rights of those who chose to exercise their
3 constitutional rights. Exhibit S.

4 135. Defendant Millar's statements were also in direct contradiction to the evidence as
5 presented by the CDC and the DOH. *Id.*

6 136. Defendant Millar states, "you deserve to know where I stand on the issue," *id.*, then
7 Defendant Millar proceeded to provide his personal opinion that the unvaccinated put
8 everyone at risk, suggesting that the unvaccinated did not care about the safety of others,
9 including, "young children," or "a five-year-old special needs child who is too young to
10 be vaccinated and too frail to survive COVID-19," or "an 85-year-old parent..." *Id.*

11 137. In that same email, Defendant Millar stated, "There is a lot of disinformation out there,
12 spread by interests who seek to divide us as a people and weaken our resolve as a nation."
13 *Id.* Defendant Millar's biased statements were a direct attack on religious objectors
14 asserting their constitutional rights.

15 138. Defendant Millar provided no guidance or leadership on the perspective of those
16 asserting their constitutional rights.

17 139. Defendant Millar's statements were emotional and unresponsive to the constitutional
18 rights of religious objectors, including Plaintiffs.

19 140. Defendant Millar also wrongfully stated that "My job and your job are not ours by right,"
20 *id.*, a misrepresentation of the contractual relationship each Plaintiff enjoyed in their
21 employment.
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1 141. Defendant Millar also stated in a statewide TEAMS meeting that he took the vaccine and
2 he “didn’t go crazy,” which was an insult to those exercising their religious freedoms.
3 This perpetuated a culture of animosity and hatred toward religious objectors that set the
4 tone for Plaintiffs being harassed by leadership for more than a year and a half prior to
5 termination.
6

7 142. This was a top-down leadership failure from Defendants.

8 143. Consistent communication in ZOOM meetings by WSDOT leadership promulgating
9 disdain for religious objectors, specifically from Todd Trepanier, South Central Assistant
10 Regional Administrator, Troy Suing, South Central Region Administrator, Travis
11 Vanderpool, South Central Region Human Resources Manager, Jeff Pelton, WSDOT
12 Director of Human Resources, as well as Defendant Millar, caused extreme grief and
13 anxiety to Plaintiffs. These communications from leadership only encouraged others to
14 accept this behavior as legitimate, causing additional harassment to Plaintiffs at their
15 respective job sites.
16

17 144. Plaintiff Larry Frostad found the statements by Defendant Millar insulting,
18 unprofessional, and biased towards religious objectors. Mr. Frostad wrote to Defendant
19 Millar in an email dated September 22, 2021, and expressed his outrage at the comments
20 made, and included a series of questions. Defendant Millar did not respond to any of Mr.
21 Frostad’s specific questions, but instead Defendant Millar supported his own behavior
22
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by stating his actions were “reviewed by the AG’s office and our civil rights team in HR and in our Office of Equal Opportunity.” Exhibit W.⁸

145. Mr. Frostad replied to Defendant Millar’s response calling out Defendant Millar’s personal justification without answering the questions posed. *Id.* Defendant Millar then simply replied “Acknowledging receipt. Thank you” without any further explanation. *Id.*

146. Todd Trepanier, WSDOT South Central Region Administrator, sent an email to all staff on September 13, 2021, with a lengthy, detailed and emotionally charged narrative regarding the death of a staff person, which Defendant Millar used to then allege the individual died from COVID-19. Exhibit X. There was no discussion whether the individual was vaccinated or not, no confirmation by Mr. Trepanier or Mr. Millar regarding whether COVID was the actual cause of death, but the effect of the letter was that the unvaccinated were blamed for this death. This type of leadership was suggesting a narrative demeaning to the exempt employees and caused great emotional distress to those who were asserting their rights to an exemption.

147. Plaintiffs Joe DeGroat and Geoffrey Gray responded to Mr. Trepanier’s email, with Mr. DeGroat asking whether Defendants were going to address the adverse reactions suffered by the many DOT employees and their families who had received vaccination, including Jason Goetz, who developed Bell’s Palsy,⁹ a confirmed adverse reaction from the

⁸ As discussed *infra*, OFM guidance did not support Defendant Millar’s interpretation of his duties and constitutional responsibilities.

⁹ Declaration of Dr. Peter McCullough in *Pilz v. Inslee* (WAWD Case No. 3:21-cv-05735, Dkt. No. 45). According to a study, mRNA COVID-19 vaccines were associated with an excess risk of serious adverse events, including coagulation disorders, acute cardiac arrest injuries, Bell’s palsy and encephalitis. The risk was 1 in 550 individuals, which is much higher than other vaccines. <https://pubmed.ncbi.nlm.nih.gov/36055877/>; *see also*

1 vaccination, just seven days after his first shot, as well as Bethany VerMaas, whose oldest
 2 daughter developed Tourette's shortly after getting the shot. "Will that story be told too?"
 3 Exhibit Y. Other individuals also suffered adverse impacts following their vaccination,
 4 which was well known by many of the Plaintiffs.¹⁰

5
 6 148. The extent of adverse reactions suffered by WSDOT employees is still being discovered
 7 through public records requests, but initial numbers of statewide cases of adverse events
 8 reported by state employees to LNI equal 114 cases, the severity of each case is unknown
 9 at this time. Exhibit Z.

10 149. These represent just the cases reported to LNI.

11 150. Based on other client records, many of these cases involve permanent debilitating
 12 illnesses/diagnoses requiring numerous medications that will need to be taken for the
 13 remainder of the employee's life.

14
 15 151. Plaintiff Austin felt so harassed by his direct supervisor, Scott Williams, that he kept a
 16 journal beginning in June 2021, of the harassment. For example, Mr. Williams frequently
 17 told Mr. Austin that the unvaccinated should be terminated, citing the "Houston
 18 Methodist hospital" lawsuit as justification, but was not understanding of the legal
 19

20 [https://dailyclout.io/report-60-bells-palsy-accounted-for-over-1-of-all-post-marketing-patients-reporting-adverse-](https://dailyclout.io/report-60-bells-palsy-accounted-for-over-1-of-all-post-marketing-patients-reporting-adverse-events/)
 21 [events/](https://dailyclout.io/report-60-bells-palsy-accounted-for-over-1-of-all-post-marketing-patients-reporting-adverse-events/)

22 ¹⁰ When Governor Inslee issued his Covid-19 vaccine mandate, the VAERS data for the Covid-19 vaccine
 23 shots showed over a hundred thousand vaccine-related deaths or hospitalizations, as well as thousands of heart
 24 attacks, myocarditis and pericarditis episodes, permanent disability in the tens of thousands and other life-
 25 threatening episodes. <https://openvaers.com/covid-data>. See also [https://vaersanalysis.info/2022/01/14/vaers-](https://vaersanalysis.info/2022/01/14/vaers-summary-for-covid-19-vaccines-through-01-07-2022/)
 26 [summary-for-covid-19-vaccines-through-01-07-2022/](https://vaersanalysis.info/2022/01/14/vaers-summary-for-covid-19-vaccines-through-01-07-2022/). The VAERS system suffers from gross underreporting by
 between 5 and 10 times and as-high-as 40 times. Center for Disease Control and Prevention Morbidity and Mortality
 Weekly Report, COVID-19 Vaccine Safety in Children Aged 5–11 Years — United States, November 3–December
 19, 2021 (CDC admits that VAERS under-reports by 4.5 times) (December 22, 2021); Electronic Support for Public
 Health–Vaccine Adverse Event Reporting System (ESP:VAERS), a Harvard Pilgrim Study (2010)(Stated that less
 than 1% of the adverse events were reported in the VAERS system.

1 reasonings behind that decision. He frequently questioned Mr. Austin about his private
2 medical status and became hostile when Mr. Austin refused to discuss this with him. The
3 pressure to discuss his vaccine status increased, with Mr. Williams not accepting that
4 Plaintiff was declining to discuss it with him.

5
6 152. Mr. Williams resorted to name-calling of unvaccinated, such as “crazy,” and stated that
7 the unvaccinated should all be fired, that was their choice.

8 153. Ultimately, Mr. Austin was terminated because he was told that he might have public
9 encounters in his field work and his presence was needed at meetings. But Mr. Austin
10 performed most of his field work alone, and meetings to this day are still done remotely.

11 154. Plaintiff Atkins texted a former supervisor, Justin Heyford, about the possibility of being
12 rehired, and was told, “Nope, not hiring back the dirty.”

13
14 155. Defendants responded to the fears of the vaccinated but did not express concern about
15 the constitutional rights of more than 400 terminated employees. For example, Defendant
16 Roger Millar stated on September 20, 2021, that “many employees are legitimately
17 afraid...that they are going to be exposed to COVID-19 by working with unvaccinated
18 colleagues....” Exhibit AA.

19 156. Neither the Proclamation, ADA or WLAD require an analysis of what other individuals
20 think or feel about the law. *See Roman Catholic Diocese of Brooklyn v Cuomo*, 141 S.
21 Ct. 63, 71 (2020) (Gorsuch, concurring) (“Tellingly...[no] Justice seeks to explain why
22 anything other than our usual constitutional standards should apply during the current
23 pandemic.”)
24

1 157. Plaintiff DuBose was told by his boss, Dave Wolf, Chief Engineer of Kittitas, that he
 2 would be unable to provide a reference for Mr. DuBose because he viewed Mr. DuBose
 3 as a public health hazard, which had nothing to do with his professional abilities. This
 4 treatment and disregard for the religious rights of Plaintiffs was encouraged and enabled
 5 by Defendants' actions.

6
 7 158. Plaintiff Lawton was specifically threatened with loss of all retirement benefits if he were
 8 terminated in lieu of retirement. Mr. Lawton retired prematurely under coercion to
 9 preserve his benefits.

10 **Proclamation 21-14 et seq. and requirement for accommodation:**

11 159. On August 9, 2021, Governor Inslee issued Proclamation 21-14 (with amendments 21-
 12 14.1 on August 20, 2021, and 21-14.2 on September 27, 2021, the "Proclamation").

13
 14 160. The Proclamation provided that "State agencies...*must* provide any disability-related
 15 reasonable accommodations and sincerely held religious belief accommodations to the
 16 requirements of this Order that are required under the American with Disabilities Act of
 17 1990 (ADA), the Rehabilitation Act of 1973 (Rehabilitation Act), Title VII of the Civil
 18 Rights act of 1964 (Title VII), the Washington Law Against Discrimination (WLAD),
 19 and any other applicable law." (emphasis added).

20
 21 161. Under the Washington Law Against Discrimination, Wash. Rev. Code. 49.60 (WLAD),
 22 any employer's restrictions of employees' constitutional rights must be narrowly tailored
 23 to further a compelling government interest.

24 162. Defendants were advised repeatedly by OFM to seek legal counsel before terminating an
 25 employee without an accommodation. For example, in a September 20, 2021, email from
 26

Kelly M. Woodward, State Human Resources Interim Deputy Assistant Director, Office of Financial Management (OFM), that “[a]gencies are advised to consider combinations of accommodations in determining if an accommodation can be granted, and to do so in consultation with legal counsel....” Exhibit AB; *see also* Exhibit AC, at 17-18, and Exhibit AD, at 17.

163. It is unknown the extent, if any, to which Defendants sought legal counsel.

164. Defendants zealously enforced its “no work” misinterpretation of the mandate and did not provide the accommodation process required in the language of the Proclamation and did not narrowly tailor its governmental interest in controlling the spread of COVID. Defendants demanded their employees be vaccinated or be terminated with no consideration for alternative methods to control the spread of the virus.

165. Because the vaccine did not stop the spread or infection of the virus, Defendants did not narrowly tailor their vaccine mandate to their compelling interest of virus containment.

Defendants’ disparate treatment of, and disparate impact on, religious employees compared to secular employees:

166. The Washington State COVID-19 Vaccine Mandate Data report compiled by the Office of Financial Management on January 12, 2022, states WSDOT determined that 457 employees had sincerely held religious beliefs, but WSDOT denied accommodations to 404 of those religious objectors. Exhibit AE. This represents an 88.4% denial of religious accommodations.

167. Comparatively, WSDOT approved 159 requests for medical exemptions and accommodated 149 of those workers, a 6.2% denial rate. *Id.*

- 1 168. Compare this with the Washington State Health Care Authority and Washington State
2 Department of Agriculture which did not deny accommodation to one religious or
3 medically exempt employee. *Id.*
- 4 169. This disparity between accommodations granted to secular and religious exempt
5 employees at WSDOT evidence disparate treatment and/or disparate impact demanding
6 strict scrutiny. *See Kane v. DeBlasio*, 19 F.4th 152 (2nd Cir. 2021).
- 7 170. The fact that other state agencies were able to accommodate their employees with no
8 terminations evidences the discriminatory treatment and impact of Defendants' actions.
- 9 171. Additionally, records obtained through a Public Records Act request found that when
10 comparing employees in the same job within WSDOT, those with approved religious
11 exemptions were denied accommodations while those with approved medical
12 exemptions were granted accommodations. Exhibit AF.
- 13 172. For example, Washington State Ferries (WSF) approved accommodations for all of its
14 seamen medical objectors except one, an 83% approval rate, while denying
15 accommodations for all seamen religious objectors, a 0% approval rate. *Id.*
- 16 173. "The risk posed by an unvaccinated, exempt employee is the same regardless of the
17 reason that the employee obtained the exemption. In other words, an employee exempt
18 from the Mandate for medical reasons presents the same risk of COVID-19 transmission
19 in a high-risk role as does an employee exemption from the Mandate for religious
20 reasons...Accordingly, giving priority consideration to employees in high-risk roles for
21 secular exemptions over those with religious exemptions is likely to fail strict scrutiny."
22 *UnifySCC v. Cody*, 2022 WL 2357068 (N.D. Cal. June 30, 2022).
- 23
24
25
26

1 174. Additionally, WSDOT approved accommodations for 67% of WMS3 staff with an
2 approved medical exemption, but denied accommodations to all 7 of those same workers
3 with the same job class who had religious exemptions. Exhibit AF.

4 **WSDOT failure to provide an interactive dialogue:**

5 175. Defendants published their process for evaluating religious and medical exemptions but
6 then failed to adhere to that process.

7 176. This process, as articulated by Defendant Pelton on August 27, 2021, was a two-step
8 process that Defendants abbreviated into one step, thereby eliminating the legal
9 requirements required by the Proclamation, statutory and constitutional law.

10 177. Defendant Pelton stated “medical and religious exemptions and accommodations will be
11 evaluated in the following manner: First an employee requests an **exemption**” by
12 completing a religious or medical exemption form, followed by the instruction that “[i]f
13 the exemption is granted, then the next step in the process is to do an assessment to
14 determine if there is a **reasonable accommodation** available.” Exhibit AG (emphasis in
15 original).

16 178. Defendants failed to follow their own stated procedure in compliance with Proclamation
17 21-14.1.

18 179. Defendants did not conduct an interactive dialogue in step two, as the denial of
19 accommodations to Plaintiffs came in the same letter that accepted their medical and/or
20 sincerely held religious exemption. Plaintiffs did not even know they had received an
21 exemption when they were all uniformly told at the same time that there would be no
22 accommodation.

1 180. In fact, WSDOT EEO Officer Christian Afful told Plaintiff Geoffrey Gray during a sham
2 *Loudermill* hearing that WSDOT did not have to conduct an undue burden analysis
3 through an interactive dialogue “due to the size of the agency.” This fundamentally
4 misstates the law and rendered the hearing meaningless.

5
6 181. Aware of this misrepresentation, Mr. Gray notified Travis Vanderpool, South Central
7 Region HR Manager, of Mr. Afful’s misrepresentation and pressed Mr. Vanderpool to
8 provide clarification of this misstatement by Mr. Afful, who was the very individual
9 tasked with understanding Title VII and WLAD legal issues. Exhibit AH. Plaintiff Gray
10 received no reply from Mr. Vanderpool.

11 182. Mr. Gray stated, “Christian specifically said that **undue hardship is NOT a subject**
12 **addressed in the accommodation process.**” *Id.* (emphasis in original).

13
14 183. “**Christian Afful (Internal EEO Manager)**, who attended the meeting by your request,
15 specifically said that my case **DID NOT include an evaluation of undue hardship.** As
16 a matter of fact, he said that WSDOT is not integrating an evaluation of undue hardship
17 **FOR ANY accommodation requests, agency wide!**” *Id.* (emphasis in original).

18 184. Plaintiff Gray continued, “**I pressed VERY HARD** to have WSDOT **tell me** HOW the
19 solution offered by my direct supervisor, Mark Norman (which was a slight modification
20 of my PD), would result in an undue hardship to the state. I got the run-around from him,
21 you, and Brian White. You never answered the question.” *Id.* (emphasis in original).

22
23 185. Defendants never answered Mr. Gray’s email or provided answers to his questions, nor
24 did they address the statements made by their own EEOC officer declaring WSDOT had
25
26

1 no obligation to even perform an interactive dialogue to identify a reasonable
2 accommodation or identify any burden to them.

3 186. Plaintiff Schutt asked for a hearing, but was told by Brenda Raegan, Human Resources
4 Department head, that it would make no difference in the outcome and that a decision
5 had already been made. He skipped the hearing.

6
7 187. Defendants sent the exact same form letter to each Plaintiff notifying them that their
8 exemption was approved but accommodation was denied. There was no discussion that
9 took place after Plaintiffs sent requests for an exemption but before notification that they
10 would be terminated.

11 188. Defendants' own EEO officer was advising them that no interactive dialogue was needed.

12 189. In form letters sent to every Plaintiff, Defendant Pelton stated, "we have determined that
13 no accommodation can be made in your current position...There are no other
14 accommodations for your position available which sufficiently mitigate or *eliminate the*
15 *risk* associated with having an unvaccinated employee performing the *essential functions*
16 of your position." Exhibit AI (emphasis added).

17
18 190. At no time prior to denying accommodation did the Defendants discuss with Plaintiffs
19 the "essential functions" of their job relied upon to deny accommodation.

20 191. At no time prior to denying accommodation did Defendants identify any accommodation
21 that would "eliminate the risk" short of vaccination or make any suggestions other than
22 vaccination.

23
24 192. At no time prior to denying accommodation did the Defendants discuss with Plaintiffs
25 any potential accommodations that would be appropriate for each Plaintiff.

1 193. At no time prior to denying accommodation did the Defendants discuss with any of the
 2 Plaintiffs the undue burden they would suffer as a result of accommodating their
 3 exemptions.

4 194. At no time prior to denying accommodation did the Defendants engage in any discussion
 5 with any of the Plaintiffs the possibility of utilizing personal protective equipment (PPE)
 6 as a means of accommodation.
 7

8 195. This was a unilateral determination by Defendants that religious and medically exempt
 9 employees would be terminated, and this decision was made without an interactive
 10 dialogue with each Plaintiff.

11 196. This “all in one” *pro forma* acceptance of exemption but predetermined denial of
 12 accommodation, without any dialogue with the individual Plaintiff employees, rendered
 13 the accommodation process a sham and completely meaningless.¹¹
 14

15 197. Plaintiff Atkins, who teleworked extensively prior to COVID, was told by her supervisor,
 16 George Comstock, who fully supported 100% telework, that after talking to Defendants,
 17 he realized there was zero chance of being accommodated. There was no consideration
 18 for full-time telework, despite supervisory support for that accommodation and despite
 19 18 months of proof that the job could be performed remotely.
 20

21 198. Michelle Kiros-Sweet, Olympic Region HR Manager wrote in an email dated August 18,
 22 2021, “I want to add that it is important to remember that the Governor stated religious
 23

24 ¹¹ The usage of cut-and-paste letters to threaten and terminate Plaintiffs evidences the chaos generated and
 25 the lack of any due process. For example, Plaintiff Preziosi, an Oiler, never received a pre-separation notice of
 26 termination, but she did receive a Notice of Separation that identified her job class as “SHOREGANG.” No one
 ever discussed her job description with her, and, in fact, she was never provided a job description. It is unclear upon
 what basis Defendants determined that they could not accommodate her.

1 and medical exemptions *may* be considered and not *will* be. Exhibit AJ (emphasis in
2 original). This statement furthered the perception that not only would an accommodation
3 be denied, but that the Governor and Defendants were hostile to even those requesting
4 an exemption.

5
6 199. Brenda Reagan, Human Resources Manager, North Central Region, stated at a
7 September 20, 2021, leaders' meeting, "We're not looking for ways to accommodate
8 people [who are seeking religious accommodation]. We're looking at their job
9 descriptions...we're looking at very old ones."

10 200. Bobbi Collins Whitehead, Human Resources Manager, Eastern Region, stated on
11 September 14, 2020, at a leaders' meeting, that testing or masking are not
12 accommodations, "because the Governor said so," yet the Proclamation itself required
13 an accommodation process consistent with the ADA, Title VII, and WLAD.

14
15 201. Defendants have provided no evidence that either the Proclamation or the Governor told
16 them not to accommodate Plaintiffs. In fact, as discussed *infra*, OFM guidance
17 specifically required strong consideration of telework, with emphasis on rotating job
18 duties to other employees to allow continued telework, determining whether the specific
19 job responsibility requiring a building presence was one that the public *must* perform in
20 the building, as well as other issues. Exhibit AK.

21
22 202. The failure to provide a meaningful accommodation process was evidenced with every
23 Plaintiff. For example, Plaintiff David Lawton, a ferry boat Captain with nearly 40 years'
24 experience, applied for a religious exemption but was told by Defendants that additional
25 information was needed. Just 31 minutes after Mr. Lawton provided that additional
26

1 information for his religious exemption, he received a notice from Defendants that his
2 religious exemption was approved but his accommodation was denied. Exhibit AL. Mr.
3 Lawton never even entered the sham accommodation process, was never allowed the
4 opportunity to discuss accommodations, did not even know if his religious exemption
5 was approved before he was told he would be terminated.
6

7 203. This was a frequent occurrence for all Plaintiffs, who never even knew their religious or
8 medical exemption was approved before they were told they were terminated without
9 accommodation, when no discussion regarding accommodation ever took place.

10 204. Defendants have admitted that they replaced the interactive dialogue with a subjective
11 and fully discretionary review of the employee's job description in determining whether
12 an accommodation could be granted. This created a process where a global denial of
13 accommodation occurred without an individual interactive dialogue.
14

15 205. Defendants utilized a fully discretionary procedure that allowed them to treat employees
16 with a religious exemption differently from secular employees.

17 206. In fact, Defendants' own policy was specifically silent on any interactive dialogue or
18 discussion with the employee seeking an exemption, but instead relied on an "analysis"
19 of multiple factors, none of which entailed a discussion with the individual employee.
20 Exhibit AD.
21

22 207. Given the long list of factors allegedly analyzed and the speed at which it was performed,
23 it was virtually impossible for Defendants to have carried out a meaningful analysis of
24 these factors, notwithstanding the fact that the analysis did not allow for employee
25 participation.
26

- 1 208. Many Plaintiffs had job descriptions that had not been updated for years, were incorrect,
2 or were completely misinterpreted by Defendants, but were silenced by Defendants when
3 Plaintiffs brought this information to Defendants' attention.
4
- 5 209. For example, Plaintiff Joe DeGroat, who was denied the ability to continue to telework
6 despite the full support of his supervisor to do so, *infra*, had a job description that was
7 more than 10 years old. This outdated description stated that Mr. DeGroat was
8 responsible for performing public facing traffic counts in the field, which Mr. DeGroat
9 had never done in 19 years on the job. Plaintiff DeGroat brought this to the attention of
10 Defendants but was denied the ability to telework regardless.
11
- 12 210. Plaintiff Steve Walker had a job description that was outdated and had another
13 employee's name on it.
14
- 15 211. Plaintiff Joe Greene had a job description 17 years old when he was terminated, dated
16 June 20, 2004, with no revisions.
17
- 18 212. Plaintiff Auckland's job description was more than 10 years old.
19
- 20 213. Plaintiff Robert Washabaugh had a job description that was approximately 5-6 years
21 outdated and had job duties specific to the individual who held the job previously and
22 who took those duties with him when he moved. That job description was in the process
23 of being updated when Mr. Washabaugh was terminated, with no consideration given.
24
- 25 214. Universally, job descriptions were not updated to reflect the 18 months where telework
26 was successfully authorized and performed.

WSDOT failure to identify an undue hardship:

- 1 215. Defendants looked for *any* ability to interpret *any* job duty of Plaintiffs as one that
 2 *theoretically might* involve public exposure, and on that basis from reading the job
 3 description they denied accommodation.
- 4 216. Defendants did not identify any actual hardship, much less any hardship that was “real,
 5 rather than speculative, merely conceivable, or hypothetical.” *Brown v. Polk County,*
 6 *Iowa*, 61 F.3d 650, 655 (8th Cir. 1995); *see also* [https://www.eeoc.gov/wysk/what-you-](https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws#D)
 7 [should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws#D](https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws#D),
 8 denying the use of speculative harm to create an undue burden.
- 9 217. Guidance received by OFM warned against hypothetical hardship. “An employer cannot
 10 rely on hypothetical hardship when faced with an employee’s religious obligation that
 11 conflicts with scheduled work but should rely on objective data.” Exhibit AM.
- 12 218. Defendants never explained why they could not “address its legitimate concerns with
 13 rules short of a total ban.” *South Bay United Pentecostal Church v. Newsom*, 141 S. Ct.
 14 716, 718 (2021) (Thomas, J. and Gorsuch, J., concurring), “nor . . . why the less restrictive
 15 options,” *id.*, were not available.
- 16 219. The arbitrary nature of Defendants’ actions denying accommodations without any burden
 17 to them is highlighted by the fact that numerous Plaintiffs were terminated by Defendants
 18 without an accommodation, but then these same Plaintiffs were hired immediately by
 19 WSDOT contractors, fully accommodated, doing the exact same work that they did for
 20 the Defendants.
- 21 220. For example, Plaintiff Wendy Punch was a Transportation Technician 3 (TT3)
 22 performing construction inspection/materials testing, and CAD drafting, all of which was
 23
 24
 25
 26

1 performed remotely or outdoors, but was denied an accommodation by Defendants. She
2 was then hired by her current employer, TranTech Engineering, LLC, a WSDOT
3 contractor, fully accommodated, performing the same work she performed for WSDOT,
4 working contracts for Defendants, who gave her a WSDOT vehicle and laptop for use
5 when she performs work for them. Ms. Punch performs WSDOT contract work for
6 Defendants as a WSDOT inspector because WSDOT fired her as an inspector.

7
8 221. Further, in this new position, Ms. Punch is responsible for training WSDOT personnel,
9 yet Defendants would not let her perform that job without vaccination but now allow her
10 to do that job with her current employer who never even required her to wear a mask.

11 222. Likewise, Plaintiff Jana Crawford was a Stormwater Branch Manager who worked at
12 Headquarters and wrote policy and programmatic guidance, which was accomplished
13 full-time remote during COVID and easily continued in that regard, but she was denied
14 that accommodation. In fact, Ms. Crawford's replacement is full time telework and had
15 no stormwater experience. Despite refusing Ms. Crawford's full-time telework
16 accommodation, Defendants terminated her and thereafter published the job vacancy and
17 recruited the position as a "full-time telework" position, which it remains to this day.
18 Exhibit AN.

19
20
21 223. Her evaluation in August 2021 stated "Above Standards" performance rating on 4 out of
22 5 competencies, with the fifth standard as "Meets Expectations," dispelling any theory
23 that her job could not be done remotely.

24 224. This is similar to Defendants' termination of Plaintiff Turcott, who was denied a religious
25 accommodation for full time telework in his job as the Emergency Manager, after which
26

Defendants advertised the position as full time telework. Exhibit AO; *see also* “Cultural Resources Specialist - Architectural Historian: www.governmentjobs.com/careers/washington/wsdot/jobs/3311304/cultural-resources-specialist-architectural-historian, a job previously held by an employee denied a remote accommodation, but thereafter offered as a remote position.

225. The arbitrary and discriminatory nature of Defendants’ actions are evidenced by the fact that Ms. Crawford, after being denied accommodation and terminated by Defendants, and then replaced by a full-time teleworker without stormwater experience, was thereafter hired by Jacobs Engineering, where she works as a contractor for Defendant, managing projects, developing project proposals, completing Defendants’ drainage reports, and other duties regarding Defendants’ compliance with stormwater requirements. Jacobs Engineering did not require anything from Ms. Crawford with respect to her employment.

226. Similarly, Plaintiff Michael Uribe, terminated without religious accommodation as a Highway Maintenance Worker 2 working outdoors, returned to work on January 24, 2023. Mr. Uribe was quietly contacted by Defendants and told he could apply for a temporary winter position, fully accommodated in his unvaccinated state, without any restrictions – no mask, testing, or other protective measures. He was told that Defendants were not advertising this. Mr. Uribe was denied any accommodation as a permanent employee, but now he is afforded a full religious accommodation requiring no restrictions on his part in a temporary position.

227. Defendants followed a confusing, if not discriminatory process, that believed that “an accommodation based on religion utilizes a different standard than an accommodation based on a disability.” Exhibit AM. Defendants stated it allegedly could claim a de minimis undue hardship to reject a religious accommodation, but did not need to go through this analysis with a medical accommodation, which allegedly must be accommodated universally, *id.*, though it is clear this policy was not followed either.

WSDOT utilized an unattainable standard:

228. Based on information and belief, the standard which Defendants used to evaluate religious and medical objectors for accommodation – “eliminate the risk”¹² – was a standard devised solely for the purpose of disqualifying religious and medical objectors from continued employment.

229. “Risk elimination” is unattainable and was a ruse for termination. It is also not the standard required by the Proclamation, WLAD, or the Constitution.

230. Defendants fundamentally misrepresented the terms of Proclamation 21-14, as the Proclamation did not demand “risk elimination” but required agencies to comply with all state and federal law, specifically citing ADA, the Rehabilitation Act, Title VII, WLAD, and any other applicable law.” Proclamation 21-14, *supra*.

231. Defendants made the predetermined decision that nothing other than vaccination would assure compliance with the Proclamation, a decision that violated the Proclamation, ADA and WLAD.

¹² This standard, “eliminate the risk,” was applied to every single Plaintiff and recited in nearly every accommodation denial letter received by Plaintiffs. *See* Exhibits B, C, D.

1 232. This standard of “risk elimination” evidences the discriminatory nature of Defendants’
2 actions. Defendants did not terminate secular vaccinated employees who were reinfected
3 and transmitted the virus to others but required religious objectors to meet this impossible
4 standard.

5
6 233. Plaintiffs questioned Defendants regarding the known fact that the vaccine did not stop
7 transmission or infection, and thus there was no “risk elimination” inherent in the
8 vaccination.

9 234. Defendants refused to acknowledge any such information presented to them by Plaintiffs.

10 235. In essence, Defendants created their own mandate within the mandate, establishing their
11 own criteria in the process – “risk elimination” – that did not comply with the
12 Proclamation or federal and state law.

13
14 236. This standard was a ruse for termination.

15 **WSDOT did not accommodate even outdoor workers, those who worked in closed offices,**
16 **or those who could telework:**

17 237. Even though many of the Plaintiffs worked either primarily or entirely outdoors, the
18 Department refused to consider the high unlikelihood that the virus could be transmitted
19 outdoors, especially when maintaining social distancing.

20 238. Defendants cited no science upon which to base their denial of accommodation to
21 outdoor workers, teleworkers, or those who worked alone in a closed office.

22 239. OSHA guidance states that no vaccination is required for outdoor workers. Exhibit AP.

23 240. Proclamation 21-14.5 states, “WHEREAS, health experts agree that outdoor activities
24 are safer than indoor activities, and individuals are less likely to be exposed to COVID-
25

1 19 while working or engaged in other activities outside, even without the use of masks[.]”

2 Exhibit AQ.

3 241. Defendants even terminated snowplow operators who worked outdoors and alone,
4 including Plaintiffs Aaron Miller and Caitlyn Lomen-Carr. Defendants claimed that even
5 outdoor workers had to be terminated or reassigned to jobs that did not require close
6 personal contact with others. It was never explained how an outdoor worker working
7 alone worked “in close proximity” with others. Mr. Miller was told that he could not be
8 accommodated because he might encounter an accident while snow plowing and would
9 put them in danger.
10

11 242. After terminating Plaintiff snowplow operators, Defendants then hired a contractor to
12 clear the passes in the winter of 2021, with no requirement for vaccination. So a job once
13 performed by Plaintiffs who were terminated for not being vaccinated, was then being
14 performed by contractors who were not vaccinated.
15

16 243. In an effort to obtain help plowing snow, Defendants hired BKC Contracting to clear the
17 SR 903 route through Ronald, WA. The contract cost taxpayers more than \$43,000,
18 Exhibit AR, and it did not require those operating under the contract to be vaccinated.
19 Exhibit AS. Therefore, Plaintiffs who had a sincerely held religious and/or medical
20 exemption were terminated for not being vaccinated, and then replaced by individuals to
21 perform the same work who were not required to be vaccinated.
22

23 244. Similarly, traffic fatalities on state highways have likewise increased more than 20% in
24 2022 from 2021 numbers, the deadliest in 25 years. Exhibit AT.
25
26

1 245. Defendants terminated highway maintenance workers who worked entirely outdoors,
2 including Plaintiff Rodney Pelham, who worked exclusively outdoors providing
3 herbicide treatment, tree felling, traffic control, roadkill removal, guardrail replacement,
4 asphalt and chip seal, snow and ice removal and vegetation management. Plaintiffs Shane
5 Taylor, Scott Schute, Benjamin Wheeler, Caitlyn Lomen-Carr, Richard Ostrander, and
6 Bobby Dean likewise worked outdoors as highway or field maintenance employees
7 performing similar functions and were denied accommodation.
8

9 246. Plaintiff Ostrander worked outdoors, alone, in his truck as part of the Incident Response
10 Team on the open highway. He was masked and fully able to social distance outdoors.
11 He was denied accommodation without reason as to what risk he presented.
12

13 247. Similarly, Plaintiff Auckland worked alone in his truck. If he had any work to perform
14 in the building, which was rare, he had his own cubicle with walls separating him from
15 others and an exclusive door.

16 248. Plaintiff Bobby Dean, in fact, questioned Defendants after he was told he would be
17 terminated, asking Defendants to identify a task that required public exposure, or what
18 risk he posed, but Defendants provided none. Mr. Dean likewise notes that 95% of his
19 office filed for a religious or medical exemption and they all received the same email, on
20 the same day, at the same time, that there would be no accommodation. None of those
21 individuals were permitted any interactive dialogue with Defendants. This included Mr.
22 Dean's supervisor, lead tech sign personnel, office and maintenance personnel. On
23 October 19, 2021, there were only four people out of 18 remaining at the Goldendale
24
25
26

1 Maintenance Shed. Everyone who applied for an accommodation was denied without
2 dialogue.

3 249. Plaintiff Aaron Miller worked outdoors as a highway maintenance worker. He was told
4 he could not be accommodated because he might come in contact with someone if there
5 was an auto accident nearby him.

6
7 250. Plaintiff Todd Humphreys performed his work entirely outdoors performing job site
8 inspections, surveying, and materials testing and documentation. During the off-season,
9 approximately three months out of the year, he worked on plans preparation, which was
10 easily done remotely and, in fact, had been done remotely for 18 months.

11 251. Plaintiff Schiess was told by Michelle Kiros-Sweet, Olympic Region HR Manager, that
12 because Mr. Schiess worked outdoors in the WSDOT highway “Right-of-Way,” even by
13 himself, he was exposing the public to a health hazard to which WSDOT could not
14 protect the public from unless he was vaccinated. There was no written guidance to
15 support this, and, in fact, this fabricated reason was in opposition to OSHA guidance.

16
17 252. Defendants terminated numerous Transportation Engineers who worked outdoors and on
18 their computers from home, with no disruption to their job function, including Plaintiffs
19 Steven Walker, Terry Dunn, and Victoria Gardner. Plaintiff Walker was told that because
20 he had to come into the building to get his gear for his job, he had public exposure and
21 could not be accommodated, but Mr. Walker could have easily kept that equipment at his
22 home.

23
24 253. Similarly, Plaintiff Victoria Gardner went to field sites alone, worked outdoors where
25 she performed all of her duties that did not involve computer access, which she managed
26

1 from her home. Ms. Gardner spent her hours working from a desk performing
2 engineering design, including CAD drafting, writing reports, hydraulics design,
3 estimates and contract plans. This was easily done from home. Similarly, Plaintiff Wendy
4 Punch, Construction Inspection/Design, performed inspection work outdoors, with
5 remaining work performed on a computer completed from her home, *supra*.

6
7 254. OFM guidance identified numerous responsibilities that were suitable for teleworking,
8 many of which were the exact duties of Plaintiffs, including, “accounting, analyzing data,
9 auditing reports, programming, phone work, data entry, evaluations, graphics and design,
10 work planning, preparing budgets, monitoring contracts, project management, research,
11 software development, spreadsheet analysis, web training, and writing and editing.”
12 Exhibit AK.

13
14 255. Defendants terminated outdoor ferry ticket booth attendants, including Plaintiffs
15 Merrigrace LaPierre, Sheri Ferguson and Sommer Beckner. Ms. Ferguson even asked to
16 go on leave without pay but was denied.

17 256. Plaintiffs should have been allowed to go on leave *with pay* pending the end of the
18 emergency situation. *See Cleveland Bd. of Educ. v Loudermill*, 470 U.S. 532, 544-45
19 (1985) (“Finally, in those situations where the employer received a significant hazard in
20 keeping the employee on the job, it can avoid the problem by suspending with pay.”)
21 (emphasis added).
22

23 257. Defendants terminated Plaintiff Brad Sawaya, who worked for Washington State Ferries
24 outdoors, loading cars onto the ferry and directing traffic. He had no contact with anyone.
25
26

1 258. Plaintiff Deborah Fletcher, a Secretary Senior, was denied telework because she was told
2 she had tasks to perform in the building. However, those tasks included performing the
3 tasks that other secretaries who worked remotely could not come into the office to
4 perform because of geographical distance from the Eastern Region complex. Ms.
5 Fletcher routinely performed these tasks long before COVID-19. The secretarial position
6 was, and always had been able to be performed remotely, and Ms. Fletcher was denied
7 the ability to telework because Defendants claimed her duties required her to be in the
8 building to perform the work of those who teleworked but were not exempt from the
9 vaccine.
10

11 259. By OFM's own guidance, duties could be shifted, *infra*, but Defendants refused to do
12 shift duties for religious objectors.
13

14 260. Moreover, Ms. Fletcher's workstation would be characterized as meeting Defendants'
15 definition of working alone.

16 261. Plaintiff Austin had been teleworking since November 2019, but was denied the ability
17 to continue.

18 262. The extraordinary loss of talent, experience and expertise is evidenced in the termination
19 of Plaintiff Shane Taylor, who worked outdoors as a Highway Worker 2 and had 18 years
20 of Winter Shift experience, 5 months as Winter Shift Lead experience, attended the
21 Maintenance Academy, Snow & Ice College, and is certified in forklift, front end loader,
22 dump truck/snow. Plow, street sweeper, flusher truck, Evergreen Pilot Vehicle and
23 Traffic Control Flagger. He has his medical Examiner's certification, as well as First
24 Aid/Adult CPR.
25
26

1 263. Defendants made no attempt to analyze individual work environments. For example,
2 Plaintiff Kerry Strawn, a Highway Maintenance Worker 2 who likewise worked entirely
3 outdoors, was only one of two individuals in his entire department who requested an
4 exemption, which would not have been difficult for Defendants to accommodate.

5
6 264. These details were never uncovered by Human Resource Defendants performing
7 accommodation processes from Olympia on a job they did not understand, reading a
8 position statement from a book, and having little knowledge of the circumstances at
9 literally dozens of office locations.

10 265. Defendant Pelton issued guidance to all staff where he defined “working alone” as
11 “[a]lone worker inside the enclosed cab of a vehicle or piece of equipment.” Exhibit AU.
12 This guidance exempted these employees from wearing masks. *Id.*

13
14 266. These instructions regarding who was “working alone” also included those employees
15 who worked “by themselves inside and office with four walls and a door,” *id.*, but
16 Plaintiffs who met this definition were terminated without consideration for their isolated
17 status, even though they brought this fact to the attention of Defendants.

18 267. Defendants did not follow OFM legal policy and definitions when utilizing telework as
19 an accommodation for religious and medically exempt workers.
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1 268. OFM policy stated “Employers should not deny a request for telework as an RA if a job
 2 *involves some contract with colleagues and coworkers* for coordination and contact since
 3 this work can be conducted virtually.” Exhibit AV, at 5 (emphasis added).¹³

4 269. WSDOT denied all accommodations regardless of contact, even if contact could only be
 5 theorized.
 6

7 270. Plaintiff, Robert Washabaugh, a design engineer, worked in his own office with a door,
 8 separate from others. He teleworked successfully throughout the COVID-19 period of
 9 time. Mr. Washabaugh was told by Regional Administrator Todd Trepanier early in the
 10 process that there would be no accommodations or reassignments for anyone.

11 271. Plaintiff Scott Schutt worked in his own office far removed from others in his work group
 12 by approximately 150 feet, in a large garage at the far end of the maintenance building
 13 away from the rest of the crew. Most of his work was performed outdoors, using his own
 14 assigned vehicle, and any work at his desk was alone, where he had no need for
 15 interaction. This work could have been done remotely.
 16

17 272. Plaintiff Daniel Hjelmseth also worked in his own office, with a door, which remained
 18 closed unless Mr. Hjelmseth needed to leave. He also had a larger slider window for
 19 ventilation. Field work included masks and social distancing. Mr. Hjelmseth rode in his
 20 own vehicle.
 21

22
 23
 24
 25 ¹³ The 2021 Roundtable discussion can also be found at [https://ofm.wa.gov/state-human-resources/hr-](https://ofm.wa.gov/state-human-resources/hr-meetings/reasonable-accommodation-roundtable-sep-2021)
 26 [meetings/reasonable-accommodation-roundtable-sep-2021](https://ofm.wa.gov/state-human-resources/hr-meetings/reasonable-accommodation-roundtables). All Roundtables can be found at:
<https://ofm.wa.gov/state-human-resources/hr-meetings/reasonable-accommodation-roundtables>

1 273. Defendant Pelton's guidance likewise stated that "working alone" included those
2 employees who worked "inside of a cubicle with 4 walls (one with an opening for an
3 entryway) that are above the head of the seated or standing desk cubicle, worker, and
4 whose work activity will not require anyone to come inside of the cubicle." *Id.*
5 Defendants permitted no analysis with any Plaintiff regarding these individual
6 circumstances.
7

8 274. In fact, Plaintiff Steve Walker worked in a cubicle, about 10-12 feet square, with one
9 door. No one needed to enter his cubicle, and regardless, Mr. Walker could perform all
10 of his duties remotely with a mobile phone and computer, which he did successfully for
11 18 months. Mr. Walker also performed work setting up office equipment in empty
12 offices.
13

14 275. Plaintiff Ron Vessey likewise worked in a cubicle with four walls and one opening. No
15 part of his job required anyone to enter his cubicle or required close coordination. When
16 Mr. Vessey was forced to retire, most of the staff were still teleworking, and were not
17 allowed in the building except on a per visit basis. To Mr. Vessey's knowledge, staff are
18 still teleworking to this day. Mr. Vessey could clearly have been accommodated via
19 telework to this day, as Defendants allowed this benefit for secular vaccinated
20 employees, but not religious objectors. This was biased and arbitrary.
21

22 276. Plaintiff Larry Frostad worked in an open-air space that would seemingly meet the
23 definition of working alone under Defendants' standards. Mr. Frostad requested a copy
24 of the evaluation of his workstation allegedly conducted as part of the process of denying
25 him an accommodation, but he was never provided that analysis. It is believed that
26

1 analysis was never performed, and regardless, there was no dialogue with Mr. Frostad
2 regarding any of the factors Defendants allegedly considered in denying
3 accommodations, much less a workstation analysis.

4 277. Even though many Plaintiffs successfully teleworked prior to COVID-19 and certainly
5 throughout the period of COVID, Defendants denied telework as an accommodation and
6 contrived reasons for requiring Plaintiff presence in the building in order to claim public
7 exposure.
8

9 278. In essence, Defendants created public exposure where none existed, and where none was
10 required. This was for the purpose of terminating religious objectors.

11 279. Defendant Pelton misstated the language of the Proclamation and the law when he stated
12 on August 20, 2021, that “Telework is not an option as an accommodation given the
13 Governor’s proclamation stating that even teleworking employees are required to be
14 vaccinated.” Exhibit AW. This is a fundamental misrepresentation of the language of the
15 Proclamation. And it violates WLAD, ADA, and Title VII.
16

17 280. Defendant Pelton also misrepresented accommodation law when he stated that,
18 “Schedule changes do not eliminate the conflict of the requirement to be vaccinated.”
19 *See Claybaugh v. Pacific Northwest Bell Telephone Co.*, 355 F. Supp. 1 (D. Oregon
20 1973).
21

22 281. The refusal to accommodate numerous Plaintiffs through telework, including Plaintiffs
23 Gray and Turcott, directly contradicts guidance from the Office of Financial
24 Management. OFM policy states that “[i]f an employee doesn’t need to be at a state
25 worksite or work a traditional schedule to perform all or some of their duties, support
26

1 them achieving their work objectives at their telework site and/or with a flexible work
2 schedule.” Exhibit AK.

3 282. The OFM guidance continues by stating that public interaction only applies when “the
4 public *must* come into the state office in-person.” *Id.*

5 283. Additionally, guidance also states that when tasks appear to require presence in the
6 building, “[a]gencies *must* answer these questions: ...Can those tasks be rotated to
7 diminish the requirement for a specific person to be on-site, or is there just one person
8 who can perform the work?” *Id.* The guidance also required answering, “How much time
9 do those tasks or processes take to complete?”, a relevant consideration that Defendants
10 did not discuss with Plaintiffs in a meaningful dialogue but predetermined that any
11 theoretical public task regardless of time required was grounds for dismissal.

12 284. Defendants failed to follow the clear guidance of OFM in denying telework
13 accommodations to many of the Plaintiffs. This guidance was last updated July 19, 2021,
14 prior to termination of Plaintiffs. *Id.*

15 285. Defendants failed to apply any of this legal guidance when terminating Plaintiffs who
16 could telework. “Embed those [telework and remote work] practices in your agency
17 culture and continue them whenever possible. *Continue to use feedback from employees*
18 *and customers to inform what is working...*” Exhibit AK.

19 286. Indeed, “what was working,” *id.*, was the same protocol Plaintiffs had successfully used
20 for 18 months with no traced COVID-19 infections to any of them. This protocol
21 included 100% telework as the job permitted, reserving office space/vehicles online to
22 avoid encountering others at the office, daily body temperature recordings and filling out
23

ReadyOp online daily, sanitizing all surfaces, door handles, printers, vehicle interiors and exterior door handles, social distancing at all times, and masking at all times, even outdoors.¹⁴

287. It was clear this protocol was working on the job and could have successfully continued with no danger or risk of danger, as evidenced by 18 months of success.

288. Defendants accepted no feedback from Plaintiffs regarding job description, duties, and individual work site circumstances.

289. OFM also stated that “[o]ffering employees supportive options for more flexibility, including remote work, is intended to make it possible for people to continue to work, rather than taking leaves of absence *or leaving the workforce entirely* – a goal that diminishes inequities and benefits employees, agencies and those we serve.” Exhibit BD.

290. Defendants refused feedback even from Plaintiffs’ supervisors who certified that full telework was possible.

¹⁴ Defendants had an extensive and detailed policy of PPE and other sanitation protocol that was effective in preventing the spread of the virus in the workplace yet provided no consideration of this preexisting structure in any alleged accommodation analysis. Plaintiffs followed this protocol and not one Plaintiff had a COVID-19 transmission traced to him or her. This protocol included the matrix “Daily Cleaning and Disinfection Guidance for Facilities” outlining the frequency and locations of sanitation procedures, Exhibit AX, a detailed plan regarding isolation and quarantine procedures to follow after exposure to a COVID-19+ individual Exhibit AY, “Disinfection protocol after persons suspected or confirmed to have COVID-19 have been in the facility,” Exhibit AZ, “Facility Improvements Checklist” to recommend ways to reduce the risk of COVID-19 transmission in the buildings, Exhibit BA, a “WSDOT COVID-19 Safety Plan,” which provided additional guidance to endure safety of employees and reduce the spread of the virus, Exhibit BB, and a “Supervisor/Management Checklist and COVID-19 Reporting” plan regarding how to respond to employee symptoms or a COVID diagnosis to prevent the spread of the virus. Exhibit BC. The denial of accommodations to Plaintiffs gave no consideration to this extensive and comprehensive guidance; they demanded as the only solution the termination of those with sincerely held religious beliefs and those with medical disabilities.

- 1 291. This took place despite an “ALL STAFF” email sent by Defendant Millar on July 20,
2 2021, that stated “Telework is a WSDOT priority,” with the goal to boost telework to
3 40% of the workforce. Exhibit BE. Defendant Millar did not follow his own policy.
4
- 5 292. This goal had been in place since March 3, 2014, when Governor Inslee issued Executive
6 Order 14-02, which likewise ordered each agency to develop and implement written
7 policy for telework and flexible work hours in order to reach the goal of “at least 40
8 percent of all state employees will be using flexible work hours.” Exhibit BF.
- 9 293. Defendant Millar stated, “WSDOT focuses on job performance and results rather than
10 work location. We know from our COVID-19 experience that we can deliver a safe,
11 sustainable, and integrated multimodal transportation system, even with many employees
12 working away from facilities. In fact, 81% of WSDOT managers report team productivity
13 is the same or higher than before widespread teleworking began.” Exhibit BE.
- 14 294. This philosophy of encouraging telework in accordance with the Governor’s executive
15 order was specifically rejected with respect to religious and medical objectors as a
16 method of accommodation.
- 17 295. Defendant Millar stated, “[s]omeone *selecting* to telework 100%, for example, will
18 *balance out* someone whose assignment is not suitable for telework or someone who may
19 want an eventual full-time return to a building.”
- 20 296. But there was no “*balance*” afforded to Plaintiffs seeking an accommodation through
21 telework, nor were any of the terminated Plaintiffs offered the ability to “*select*” 100%
22 telework.
23
24
25
26

1 297. Defendants terminated Plaintiff Geoffrey Gray, Region Biologist, who teleworked more
2 than 18 months *prior to* termination and had the unequivocal support of his supervisor to
3 continue to telework, which he successfully did throughout COVID. Mr. Gray drove and
4 worked alone in the field and was always outdoors with a mask and social distanced.
5 Moreover, Mr. Gray presented an updated Position Description including fulltime
6 telework, prepared by his supervisor Mark Norman, Assistant Environmental Manager –
7 Biology and Mitigation, but it was outright rejected by Bill Sauriol, Environmental
8 Manager, Mr. Norman’s boss. When Mr. Gray pushed Defendants to provide an undue
9 burden they would suffer if he continued to telework, Mr. Gray was told that the agency
10 did not have to do that analysis because of its size. Mr. Gray published this WSDOT
11 statement in notes he transcribed during his union grievance meeting. He solicited
12 feedback on the accuracy of his notes from all who participated and received no changes
13 regarding his recitation of the statements made or the events that took place.

16 298. Plaintiff Gray’s supervisor, Mark Norman, wrote a letter in full support of Mr. Gray’s
17 telework accommodation to Mr. Norman’s supervisor, Bill Sauriol. Mr. Norman wrote
18 that “[t]he Corps and Ecology liaisons at the site were overwhelmingly supportive of
19 finding ways to keep Geoff while continuing to stay safe . . . I was very discreet in what
20 I said to them, but when they heard Geoff was leaving they all implored me to do
21 everything I could to keep him and said interacting 100% over Teams was just fine . . .
22 Geoff is a valuable asset to WSDOT’s team of biologists. To lose him is to lose years of
23 valuable experience and the valuable relationships he has built with the WSDOT liaison
24 program and Ecology.” Exhibit BG.

1 299. In response to this letter pleading to keep Mr. Gray, Mr. Sauriol simply stated he would
2 forward the letter to Brian White, Assistant Region Administrator, and Travis
3 Vanderpool, Human Resources, without any other statement showing consideration of
4 accommodation other than, "I hope they contact him directly and try to convince him to
5 get vaccinated." *Id.*

6
7 300. Plaintiff Gray never received any feedback or response from Mr. White or Mr.
8 Vanderpool.

9 301. This was the common talking point given by Defendants to every Plaintiff seeking
10 dialogue: get vaccinated.

11 302. Similarly, Plaintiff Joe DeGroat, Transportation Engineer 3, likewise teleworked 100%
12 and had the full support of his supervisor, Mr. James Todd Daley, who was head of the
13 Traffic Office, to continue in that telework capacity but was forced to retire prematurely
14 or take the vaccine. Mr. DeGroat also was assigned a cubicle that would have met the
15 definition of "working alone," *supra*.

16
17 303. Plaintiff Atkins likewise had the full support of her supervisor to work remotely but was
18 denied.

19 304. Defendants likewise terminated Plaintiff Steven Turcott, Eastern Washington
20 Emergency Management, stating that although he had teleworked throughout COVID,
21 including working remotely staffing four Emergency Operations Centers, Defendants
22 claimed he was public facing because he needed to be in the office for future EOC's,
23 with no specificity regarding why his physical presence was needed. Virtual/remote
24
25
26

1 staffing of emergency operations centers is a standard and common practice throughout
2 the nation. Mr. Turcott's replacement works remotely.

3 305. In fact, as stated *supra*, Mr. Turcott's vacant position was advertised as full-time telework
4 in January 2022 after his termination.

5 306. Similarly, Plaintiff Frostad was terminated because he was told he needed to be at the
6 worksite as a member of the EOC. But removing Mr. Frostad's assignment to the EOC
7 would not have burdened Defendants in the least, and regardless, Mr. Frostad's presence
8 at EOC events was not necessary. The Eastern Region EOC was activated during the
9 COVID era and was staffed by personnel working virtually while teleworking.
10

11 307. Defendants refused to accommodate fulltime teleworker and Plaintiff Ron Vessey, even
12 though Mr. Vessey's Director and Appointing Authority Dongho Chang, declared in
13 writing using the approved WSDOT questionnaire that Mr. Vessey could perform his job
14 100% telework. Mr. Chang's determination was also supported by Assistant Secretary
15 Marshall Elizer. However, Assistant Secretary Review Board (ASRB) overruled
16 Mr.Chang and Mr. Elizer, basing the denial on future hypothetical issues that he believed
17 might require public exposure, without any real specifics.
18

19 308. Furthermore, Human Resources sent Mr. Vessey a reassignment offer to another position
20 with an extraordinary pay cut, and the job description actually *required* public exposure
21 through meetings with staff, vendors, and other required in-person meetings. When Mr.
22 Vessey pointed out this hypocrisy, asking why he posed a threat with hypothetical
23 interaction but did not pose a threat with required interaction, the HR authority simply
24
25
26

1 responded that he assumed Mr. Vessey was not interested in the reassignment, without
2 answering the obvious question.

3 309. Defendants terminated Shasta Atkins, who teleworked 100% as a Bridge Engineer. Ms.
4 Atkins' supervisor had waived all in-person duties and shifted those to a local employee,
5 but Defendants still refused to accommodate her.

6 310. Plaintiff Lynn Nowels was a Fiscal Specialist Supervisor and performed her job
7 electronically, such as reviewing and writing reports for payroll, writing DOT Adopt a
8 Highway agreements, preparing Repair Cost Estimates for damages and submitting them
9 electronically, and responding to phone messages from the public, all done remotely.
10 Defendants claimed Ms. Nowels could not telework because she had to be in the building
11 to sell commercial vehicle and rest area permits, but this was, and still is, done online.

12 311. Moreover, Defendants terminated Ms. Nowels at the same time Ms. Nowel's workspace
13 was still locked down to the public, which remained locked down for nearly a year after
14 Defendants terminated, meaning at minimum Ms. Nowels could have worked another
15 year. Indeed, Defendants claimed the office was public facing, but after terminating Ms.
16 Nowels, Defendants converted the office to a fully remote office with employees
17 currently working remotely and coming into the office as little as a morning per week.

18 312. Additionally, WSDOT terminated exempt employees by refusing a telework
19 accommodation, but then advertised that same job as full-time teleworker, *supra*.

20 313. This conversion of a position that was successfully performed remotely during the
21 pandemic to full-time telework by WSDOT just after firing the religious objectors
22 without an accommodation occurred in several instances, including the Eastern
23 24 25 26

Washington Emergency Manager position, Exhibit AO, and the Stormwater Branch Manager, Exhibit AN.

314. At a minimum, Defendants could have at least accommodated Plaintiff until such time as workers were called back into the building, which did not occur until February 3, 2022, Exhibit BH, after which even some were allowed to continue to telework.¹⁵

315. Defendants contrived numerous hypothetical excuses to force Plaintiffs back into the building months before the October 18, 2021, vaccination deadline for the express purpose of discontinuing allowance of full telework and enforcing the vaccine mandate. This advice, to bring individuals back into the office so that there would be a reason to then deny accommodation, Exhibit BJ, was actually a tactic suggested by the Society for Human Resources Management (SHRM), an HR think tank, based on information and belief, was relied upon by Defendants for legal advice. Exhibit BK.

316. Not only did Defendants bring many of the Plaintiffs back into the office prior to termination in order to establish the precedent that the position could not be performed remotely, Defendants also contrived job responsibilities that could allegedly not be performed remotely, thereby eliminating telework as an accommodation.

¹⁵ On November 3, 2021, Defendant Millar issued an “All Staff” update on return to the building and stated that Defendants were “dialing up” capacity in buildings to 25%. Exhibit BI. “The first turn of the dial starts now to 25% capacity at facilities that are ready and able to accommodate in-person/hybrid meetings, intermittent office work, etc. With capacity limited to 25%, **most employees who are allowed back into buildings will likely spend many of their days teleworking.**” *Id.* Even this return “is dependent on how November and December progresses...” *Id.* It is inconceivable how one can justify terminating religious objectors under the pretense that they could not telework, yet allowing secular employees the option to continue to telework long after religious objectors were terminated.

1 317. For example, as discussed *supra*, Defendants contrived a job responsibility for Plaintiff
2 Joe DeGroat, claiming he was responsible for Traffic Counts in the field, which
3 Defendants claimed was a public position requiring vaccination. However, despite the
4 fact that Mr. DeGroat had never performed a traffic count in 19 years on the job, these
5 traffic counts were done using automated methods with video cameras installed by an
6 office tech at intersections where Mr. DeGroat requested traffic counts. Defendants
7 presented the responsibility as one requiring Mr. DeGroat, a Traffic Engineer 3, to sit at
8 the intersection and count cars, an antiquated method that had been done long ago by
9 entry level employees, never by Mr. DeGroat. And regardless, that work would have
10 been performed outdoors, where a vaccination would have been unnecessary.

12 318. As discussed, *supra*, Plaintiff Nowels was denied telework because Defendants claimed
13 she was needed in the office to sell commercial vehicle and rest area permits, but this
14 process was fully converted to an online service for customers and remains fully online
15 to this day.

17 319. Even SHRM advised, “Employers who require all employees to work remotely because
18 of ETS [Emergency Temporary Standards] will be setting a precedent that the position
19 can be performed remotely. . . . Doing so will make it difficult for employers to refuse
20 future requests, regardless of the reason, from employees in the same or similar positions
21 to work remotely as the refusal could serve as the basis for a discrimination claim.”
22 Exhibit BL.

24 320. Defendants did not have the knowledge or the experience of the jobs for which they were
25 remotely and unilaterally determining whether an accommodation could be granted.
26

1 321. For example, Plaintiff Chris Paneris demanded a meeting after he was told, without
 2 dialogue, that he would not be accommodated. At that meeting, Eben Phillips stated he
 3 was the Engine expert in the HR meetings discussing implementation of the mandate, yet
 4 he had never worked as crew on any ferry. Instead, Mr. Phillips stated he used outside
 5 industry standards of Plaintiffs' job descriptions in formulating his opinion that all Oilers
 6 in the Engine Room had close contact with others, which misrepresented the reality of
 7 the contact.
 8

9 322. Mr. Paneris offered to perform a walk-through of his workspace in the engine room to
 10 educate those making the determination, but this was refused.

11 323. Plaintiff Sean Morgan, Chief Engineer, like all Plaintiffs who worked in the engine room
 12 of a ferry, a restricted area with the door locked, was told he could not be accommodated
 13 because he had normal and regular contact with the public, which simply was not true.¹⁶
 14

15 324. Oilers, like Plaintiff Preziosi, worked in the Engine Room, which was the entirety of the
 16 lower car deck below, an expansive area with only four crew present, at most, with their
 17 own kitchen, day room, bathroom and Engineer Operating Station. They had no contact
 18 with public or passengers, and watch turnover at the end of the shift was held outdoors,
 19

20
 21 ¹⁶ Like all Plaintiffs who were Engineers or Oilers, they lived at the console of the ship in the engine room,
 22 which is in the belly of the boat. It is described as "the single most isolated position on a ferry boat." M.E.B.A. BA
 23 Section 14(a). In fact, the essential functions of a Chief Engineer state that the Engineer Officers in charge of watch
 24 "Shall not be required to perform duties away from the confines of the engine room or fireroom casings while the
 25 vessel is underway." The Engine Room consists of a Chief, an Assistant, and two Oilers. The Engine Room spaces
 26 are separated with watertight doors and bulkheads. Each space has an additional external door to the open air car
 deck. They are highly ventilated with total exchange of air in a matter of minutes. They have their own kitchen,
 bathroom and crew area. The layout of each boat varies, which begs the question of how Defendants can make a
 blanket denial of accommodations to all engineers and oilers without having any information, or indeed, even asking
 for clarification, regarding the layout of the boat, the work environment of each exempted employee, and the ability
 to accommodate based on these unique factors.

1 on the car deck once all passengers had left. These are issues and details that assigned
2 HR decision-makers refused to discuss and had no time to discover.

3 325. This is why interactive dialogues were not only constitutionally required, but they were
4 also an absolute necessity to help administrative staff located hundreds of miles away
5 from a work site understand the particulars of jobs and work environments of which they
6 had no knowledge or experience. Those terminated from ferry service alone each worked
7 on a different boat, with a different vessel layout and different accommodation
8 considerations, yet all were globally denied under a universal application of job
9 descriptions.
10

11 326. Chief Engineers and Oilers universally brought to the attention of Defendants the
12 aggressive ventilation system inherent in engine rooms aboard ferries, coupled with the
13 few people who occupy the very expansive space. Engine rooms contain propulsion
14 engines, heat-emitting components such as boilers, diesel generators, combustion air
15 exhaust pipes, and major electrical equipment. The engines need air for consumption,
16 and air flow is further needed to cool the space and remove excess heat. Consequently,
17 engine room ventilation is highly sophisticated but very aggressive.¹⁷
18

19 327. Universally, Defendants shut down any discussion regarding this fact.
20

21 328. Based on information and belief, Defendants never considered this data in any alleged
22 analysis performed.
23

24 ¹⁷ For an extensive discussion regarding engine room ventilation and the absolute need for adequate
25 ventilation, see <https://www.heinenhopman.com/20220308-engine-room-ventilation-explained/>
26 and <https://www.powerandmotoryacht.com/maintenance/how-to-properly-ventilate-your-boats-engine-room>.

1 329. Defendants did not consider air exchange rates in these spaces and compare that data to
2 guidance from the medical community about COVID exposure risk in areas of rapid air
3 movement.

4 330. These are the details that HR decision-makers were not qualified or even had the minimal
5 education required to intelligently analyze, nor did they attempt to analyze utilizing the
6 expertise of those who had that knowledge base, in the expedited decision to offer no
7 accommodations and rely on job descriptions and random resources to do so.
8

9 331. Those Defendants making the determination about accommodation merely looked for
10 key phrases in a job description to justify termination.

11 332. Those individuals in HR denying accommodations also referenced outdated Position
12 Descriptions (PD) that were not revised to include the telework and COVID risk
13 mitigation used during outdoor fieldwork. Defendants updated these PDs after
14 terminating Plaintiffs.
15

16 333. Plaintiffs became aware that the entire accommodation process was a sham and that no
17 one was really responding to them personally, outside of form emails and canned
18 responses.
19

20 334. Plaintiff Turcott was assigned duties for the purpose of denying accommodation that
21 were not his duties and were not in his job description. Specifically, Mr. Turcott was told
22 he provided in-person training and in-person attendance at meetings with stakeholders.
23 But no such requirement existed in Mr. Turcott's Position Description. And regardless,
24 any alleged meetings with stakeholders were speculative, as stakeholders were not even
25 conducting in-person meetings.
26

1 335. Moreover, throughout the COVID pandemic, while teleworking, Mr. Turcott
 2 successfully attended numerous virtual internal WSDOT meetings and stakeholder
 3 meetings relating to his area of responsibility, and he both received and provided training
 4 through virtual means.

5
 6 336. Defendants justified their act by saying the stakeholders “might” hold in-person
 7 meetings, yet another ruse to terminate Mr. Turcott in violation of EEOC standards that
 8 speculative harm is not harm.¹⁸

9 337. In fact, Plaintiffs were told to not bother with even applying for an exemption, that no
 10 accommodation would be granted. For example, Travis Vanderpool, South Central
 11 Region HR Manager, made it very clear that there would be no accommodations granted
 12 and recited Defendants’ position that relied upon a blanket “interacting with the public”
 13 job function, whether it existed or not, to decline accommodation.
 14

15 338. The refusal to discuss or provide dialogue was admitted by Defendants on or about
 16 August 16, 2021, when Todd Trepanier, WSDOT Region Administrator, stated that “We
 17 weren’t to enter into conversations of detail of why this was occurring; we were to not
 18 enter into conversations that debated this, the science behind it; we were not to enter into
 19 the conversation debating the politics behind it. It was just, quite, just quite simply that
 20 this was a Proclamation that has been rolled to cabinet agencies and our agency is
 21 implementing this policy...”¹⁹
 22
 23
 24

25 ¹⁸ [https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-](https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws#D)
[other-eeo-laws#D](https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws#D).

26 ¹⁹ <https://www.youtube.com/watch?v=fggZ8Uem11A> (starting at 5:01)

1 339. This misstated the words of the Proclamation, which required compliance with WLAD,
2 Title VII, and ADA.

3 340. Michelle Kiros-Sweet stated that “it is important to remember that that Governor stated
4 religious and medical exemptions *may* be considered and not *will* be.” Exhibit AJ, *supra*.
5 Ms. Kiros-Sweet misstates the law entirely, as the Governor *must* consider all requests
6 for exemptions and accommodations; it is not a process the Governor or Ms. Kiros-
7 Sweets had the legal authority to disregard.
8

9 341. This type of language sent a chilling message throughout the agency that the process of
10 applying for an accommodation – indeed, even an exemption – was predetermined and a
11 sham at best, and that the Governor had full discretionary authority to even grant a
12 religious exemption based on a sincerely held religious belief. This is not the law.
13

14 342. No matter the suggested accommodation, it was denied. Plaintiff Donna Tegnell
15 requested the accommodation to go on leave of absence until the Novavax vaccine was
16 available. Defendants rejected this request.

17 343. Plaintiff Chris Paneris went to the extreme and was still denied; he requested to purchase
18 and use a helmet with a HEPA filter, which was considered an effective COVID-19
19 isolating barrier by CDC,²⁰ but he was denied. He also requested to purchase at his own
20 cost and use a powered air-purifying respirator (PAPR) used in hospitals by physicians
21 in high-risk procedures but was also denied.
22
23
24

25 ²⁰ <https://pubmed.ncbi.nlm.nih.gov/35947419/>
26

1 344. Plaintiff Larry Frostad was told that despite working remotely for 18 months, his
 2 presence was required at the worksite because he supervised others. Yet, he managed to
 3 supervise others throughout the pandemic without any issues. *See* decisions of three
 4 WDFW Arbitrations, *infra*, where it was found that supervision could be done remotely,
 5 as it had been done throughout the pandemic.
 6

7 345. A September 9, 2021, email from Emily Beck, Assistant Director, Human Resources,
 8 Office of Financial Management, to Defendant Pelton before any accommodation
 9 process had even started, asked him to share his template for “RA approvals,” stating,
 10 “[w]e are only doing temporary approvals and want to compare language.” Exhibit BM
 11 (emphasis added).
 12

13 346. Defendant Pelton openly stated that “[w]ith respect to both [religious and medical
 14 exempt] groups, *only temporary accommodations would be approved for medical*
 15 *accommodations* for reasons such as, (e.g., pregnancy, breastfeeding, cancer treatment,
 16 clinical trials, etc.),” Exhibit AW (emphasis added), an unconstitutional preference for
 17 accommodations for secular employees over employees with a sincerely held religious
 18 belief.
 19

20 347. Defendant Pelton’s language clearly eliminates any accommodation potential for those
 21 with a sincerely held religious exemption, regardless of what the Plaintiffs suggested.

22 348. The same document adds that “[t]elework is not an option as an accommodation given
 23 the Governor’s proclamation stating that even teleworking employees are required to be
 24 vaccinated...” *Id.*

25 349. Defendants systematically eliminated every avenue and potential for accommodation.
 26

1 350. This was encouraged by the Governor's Office.

2 351. Kathryn Leathers, Chief Legal Counsel for Governor Inslee, stated on August 3, 2021,
3 "Exemptions: medical for sure; and religious (if we have to; if yes, as narrow as
4 possible.)" Exhibit BN.

5
6 352. Plaintiffs received emails from nameless boxes instructing them on how to apply for an
7 accommodation or reassignment, such as exemption@wsdot.wa.gov that was, based on
8 information and belief, programmed to simply provide canned responses that did not
9 specifically address the questions a Plaintiff submitted. Michelle Kiros-Sweet stated that
10 "an email address has been assigned as an intake box for the forms and will be provided
11 to staff," Exhibit AJ, but staff never responded specifically to questions but Plaintiffs
12 instead were sent canned responses.

13
14 353. The canned responses provided great frustration to Plaintiffs, who simply wanted to
15 engage in a dialogue to discuss accommodation options. Emails received from this
16 nameless email box simply acknowledged that contact was made to the website and
17 repeated general information, reiterated the deadlines for taking the vaccination to avoid
18 termination and repeated the COVID narrative regarding death and vaccine efficacy.

19 354. Even Defendants gave canned responses to all emails. Plaintiff Gray emailed Mr.
20 Vanderpool and asked questions regarding who, exactly, was authorized to
21 review/approve/reject the exemption requests and authorize accommodations. Exhibit
22 BO. He was given a typical canned response, "Thank you for your email. I am
23 acknowledging that I received it and read it." But no answer was ever provided to his
24 questions.
25
26

Reassignment:

355. Reassignment, as indicated by EEOC protocol, is a last resort and can only be considered *after* engaging in an interactive dialogue to identify a reasonable accommodation that does not create an undue burden.²¹ Defendants skipped interactive dialogues to find an accommodation and jumped right to reassignment potential. *See* discussion *supra*.

356. Most Plaintiffs were not offered reassignment, but many have direct evidence of jobs that were available for which they were qualified but were not offered these positions.

357. For example, Plaintiff Chris Paneris submitted a resume for reassignment and having performed various jobs with WSF, believed a position would be offered to him, but that did not happen. A dispatcher position was available, made known to Mr. Paneris by his Union Representative Eric Winge, and Mr. Paneris had performed dispatch work previously. Mr. Paneris was told by Mr. Winge that despite Mr. Winge's advocacy for Defendants to hire Mr. Paneris, Defendants gave Mr. Winge a solid no without reason. Mr. Winge indicated he was confused by the response.

358. Additionally, Mireya Mendoza, an Engine HR representative, also vacated her job, and Mr. Paneris has a B.A. degree with a concentration in Human Resources, but Defendants did not offer this job to Mr. Paneris, either.

359. Plaintiffs who applied for a reassignment were universally either ignored, sent a form denial without consideration, or weren't even told about positions that were available.

Undue harm not identified, all based on speculative or theoretical harm:

²¹ <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws#D>

1 360. Defendants refused to accommodate Plaintiffs based on purely speculative harm
 2 regarding Plaintiffs' *potential* public interaction, regardless of whether there had been
 3 any such public interaction in the past, and regardless of whether any minimal *potential*
 4 exposure which might become necessary could be accommodated through the use of
 5 PPE.
 6

7 361. Defendants were told directly by some Plaintiffs that numerous published studies
 8 concluded that the vaccines did not prevent infection, which Defendants chose to ignore.

9 362. There were many published studies, even by the CDC, documenting the catastrophic
 10 failure of the vaccine that were released prior to the October 18, 2021, termination date.

11 363. Defendants refused to answer Plaintiffs' inquiries regarding how Plaintiffs posed any
 12 greater "risk of harm" than the vaccinated, given the abject failure of the vaccines to
 13 prevent infection and transmission, and given these studies.
 14

15 364. Plaintiffs worked successfully throughout the crisis utilizing PPE and other methods,
 16 *supra*, with no stated reason why continued use of PPE was not equivalent, if not better,
 17 protection against COVID-19 infection and transmission, especially in light of the failed
 18 vaccine.
 19

20 365. Ironically, after terminating Plaintiffs, Defendants reinstituted a mask policy as a method
 21 of containing the spread of the virus but refused to recognize masks as an accommodation
 22 with religious objectors as a method containing the virus. Exhibit BP.

23 **WSDOT failed to consider the net burden to the agency in mass terminations:**

24 366. Defendants refused to balance the undue hardships to the citizens of Washington State
 25 and the mission of the agency in their refusal to consider accommodations for hundreds
 26

of state employees, *see Kenner v. Domtar Industries, Inc.*, 2006 WL 522468 at *4 (W.D. Ark. 2006), which has resulted in catastrophic disruption of services to the citizens of Washington and a degradation of the mission of the Agency.

367. OFM guidance to Defendants required Defendants to consider “causes a lack of staffing,” as well as “[s]ize and operating costs of the business impact of the accommodation on the agency as a whole,” Exhibit AM, which would likewise include operating costs that would result from a denial of accommodation, as well.

368. That guidance also required Defendants to consider “safety concerns and security consideration.” *Id.*

369. Defendants forced 402 employees out of employment due to the vaccine mandate and Defendants’ steadfast refusal to accommodate religious and medical objectors. Exhibit BQ.²²

370. Defendant Pelton stated that the Agency received “over 200 request [sic] for exemption or accommodation without even distributing the forms from State HR. We expect around 1000 requests once forms are available for distribution.” Exhibit AW.

371. A report released in March 2022 regarding position vacancies in the South Central Region alone indicated more than 150 unfilled positions, which equates to more than 30% vacancy rate in that one region. Exhibit BR.

372. This crisis in staffing resulted in reduced services across the state.

²² Defendants pressured employees not to file exemptions, as there would be no accommodations. For example, Plaintiff Rodney Pelham was deterred from filing an exemption by both Jim Hart, Olympic Region Area 3 Supervisor, and Connie Rea, Olympic Region Superintendent, both telling him that exemptions would not be accommodated.

373. For example, ferry schedules were decimated because of the mass termination of ferry workers, including numerous Plaintiffs who worked as Oilers, Ferry Boat Captains, Chief Mates, and Chief Engineers, causing “severe” staffing shortages, with 106 job openings listed across all departments in May 2022.

374. A March 8, 2022, report addressed the lack of reliability of ferry service and the staffing crisis, and admitted they were unable to predict when ferry service would return to “normal.” Exhibit BS.

375. The March 8, 2022, report stated that “WSF is facing severe staff shortages that are unprecedented in its 70-year history.” *Id.* at 4. The Report also acknowledged that WSF had been operating on an “Alternative Service Plan” with significant reduced service since October 2021, which coincided with the massive terminations of ferry workers, including many Plaintiffs. *Id.* at 7.

376. Defendants’ spokesman Ian Sterling stated, “It’s not good, quite honestly. We don’t have enough people to sail the vessels right now. We need to hire, train, and get people out on the water.”²³

377. Based upon information and belief, Defendants have accelerated the training of new mate candidates through the Maritime Institute of Technology and Graduate Studies (MITAGS). Due to the lack of deck officers, WSF has created a program that is not based on quality or safety but on adding deck officers to the ranks, resulting in the promotion of Chief Mates to Captain without the necessary experience and education.

²³ <https://www.king5.com/article/news/local/seattle/washington-state-ferries-staffing-shortages/281-90b8acf7-e911-4cea-83a2-cf6692672810>

378. This accelerated training schedule may have contributed to a July 28, 2022, ferry crash near the Fauntleroy Dock in West Seattle, in which the ferry Cathlamet “sustain[ed] heavy damage,” crushed one side of the ferry, as well as a car that was pinned inside the ferry by bent metal.²⁴ The report noted that “[f]erries occasionally hit and damage pilings at the terminals, but impacts that dent a boat are rare.” *Id.* Engine failure was eliminated as a cause.

379. “Again the people of WA suffer the bad results of the current Governor’s incompetence. When the current Gov fires experienced state workers for no good reason, he creates staff shortages. When he creates staff shortages, he causes overwork, fatigue and mistakes.” Exhibit BT.

380. Hours-long ferry delays and long lines were widely reported.²⁵

381. Cancelled ferry runs became common and were widely reported. Exhibit BU.

382. Most routes were reduced to one-boat service. Exhibit BU, at 7-8.

383. This caused incredible frustration among the citizens of the state, who became stranded when routes were cancelled without warning. Exhibit BV.

384. Washington Ferries continued to evidence problems due to staffing shortages caused by termination of Plaintiffs without accommodation. Exhibit BW.

385. Plaintiff Jeremy Greene was a relief Chief that worked two classes of vessels. He worked alone in an office in the Engine Room, a secure facility where no public is permitted

²⁴ <https://www.seattletimes.com/seattle-news/ferry-crashes-into-fauntleroy-dock-sustaining-heavy-damage/>

²⁵ “Crew shortages cancel more Washington State Ferries Trips,” <https://www.seattletimes.com/seattle-news/transportation/crew-shortages-cancel-more-washington-state-ferries-trips/>.

1 entry.²⁶ After termination, Mr. Green was rehired in February 2022 at an entry level
 2 position as an Oiler, and then had the job offer rescinded by Defendant Kim Monroe,
 3 Human Resources Director, and Eben Phillips, Deputy Director of Vessel Maintenance,
 4 denying him an accommodation. Mr. Greene had received a “conditional offer of
 5 employment” pending only the granting of a religious accommodation.
 6

7 386. Mr. Greene sent numerous emails to Defendants throughout 2022 indicating he was
 8 available for employment and rehire but was ignored.

9 387. Thereafter, Mr. Green again applied for a temporary Assistant Engineer position in
 10 November 2022 after the Governor released his emergency powers declaration, but was
 11 denied accommodation, despite many positions available.
 12

13 388. Thereafter, in December 2022, Mr. Greene again applied for an entry level position, as
 14 Defendants publicly stated that they were able to accommodate religious objectors. Mr.
 15 Green was denied a religious accommodation, even though Defendants had already
 16 accommodated newly hired Plaintiff Chris Paneris, who was rehired in January 2023
 17 under a religious accommodation. Mr. Green has received, and continues to receive,
 18 records requested under the Public Records Act specifically stating that the State did not
 19 want to rehire Mr. Green, with indication that this is in retaliation for Mr. Greene
 20 challenging the rescission of the job offer in February 2022. Document discovery is
 21 ongoing.
 22
 23
 24

25 ²⁶ The Engine Room is described as “the single most isolated position on a ferry boat.” M.E.B.A. BA
 26 Section 14(a).

1 389. Plaintiffs attempted to regain their lost employment as the staffing crisis continued to
2 escalate but Defendants refused their reinstatement or the ability to reapply for
3 employment.

4 390. For example, Plaintiff Rodney Pelham contacted his supervisor in February 2022
5 inquiring about returning and was told not without a vaccination. Mr. Pelham worked
6 outdoors except for crew meetings, but crew meetings were held in a large garage that
7 WSDOT had already set up personal spaces six feet apart. Mr. Pelham could have easily
8 maintained his distance in meetings that were already organized for that purpose.
9

10 391. Plaintiff Jay Sarver, an Oiler with a 3rd Engineer license, contacted his supervisor
11 Westley Sweet in December 2021 asking if he could return to his position, at which time
12 he was told there was no talk of any returns without full vaccination.
13

14 392. Plaintiff Chris Paneris applied for an Oiler position and was rehired in December 2022,
15 given an accommodation that requires no action on his part, including no requirement to
16 wear PPE or social distance. Exhibit BX.

17 393. Defendants choose to accommodate some Plaintiffs but not others, even within the same
18 job titles. Plaintiff Jeremy Greene had applied for this same position several times and
19 was denied.
20

21 394. More than 15 months after terminating Plaintiffs, Defendants rehired Plaintiff Chris
22 Paneris, but at great economic devastation to Mr. Paneris, who lost all seniority; despite
23 14 years' experience, he is now junior, on-call Oiler placed on probation at a massive
24 wage loss.
25
26

1 395. When terminated, Mr. Paneris was a Senior Oiler and permanent on the M/V Chimacum,
 2 with Seniority #27. Upon rehire, he is now a new hire, on-call Oiler that bounces from
 3 boat to boat at different ports as needed, sometimes working with unwelcoming crews
 4 and dealing with discrimination from superiors, and on probation with no vacations
 5 despite his training and years of experience, with no set schedule, making childcare issues
 6 difficult.
 7

8 396. He has also lost guaranteed holiday pay and he is not guaranteed four hours of overtime
 9 per week. His seniority went from #27 to #191.

10 397. Plaintiff Preziosi was encouraged to reapply for her job, as a new hire, as an on-call Oiler
 11 with zero seniority.
 12

13 398. Plaintiffs are being economically devastated by Defendants' behavior of wrongfully
 14 terminating Plaintiffs and then allowing a select few to reapply as new hires as opposed
 15 to reinstatement with the same benefits and pay as when they were terminated. This is
 16 yet another step in the discriminatory and discretionary process that fully benefits
 17 Defendants economically but catastrophically destroys Plaintiffs.
 18

19 399. The decision to allow some to reapply for jobs with a full religious accommodation
 20 furthers the arbitrary and capricious nature of Defendants' behavior.

21 400. Defendants' decision to allow some individuals to return with a religious
 22 accommodation, while denying others even in the same job that same ability is a political
 23 decision not grounded in science.

24 401. Washington State Ferries has been hardest hit by the wrongful policy of Defendants, as
 25 documents identifying vacant positions in "Engine Room Crew" show an alarming
 26

vacancy rate on October 22, 2021, just after the mandate took effect, as compared to the same vacancy rate document among Engine Room Crew on October 12, 2021, before the mandate. Exhibit BY.

402. Based on information and belief, religious accommodations were based on political beliefs and not on science or safety.

403. The ability to provide accommodations to some employees and not others, especially in the same work environment, outlines the arbitrary and egregious nature of Defendants' actions.

Defendants required a form to request a religious exemption that placed a chilling effect on religious objectors:

404. Defendants required Plaintiffs utilize the WSDOT prescribed form to request a religious exemption.

405. The form that Defendants required Plaintiffs to utilize to request a religious exemption asked two "yes/no" questions, neither of which advanced the argument of whether the individual actually had a sincerely held religious belief. Exhibit A.

406. The first question asked whether the individual has a sincerely held religious belief or conviction that prevents vaccination, while the second question asked the individual to "affirm/agree that you have never received a vaccine or medicine from a health care provider as an adult."

407. It is unclear how anyone would meet this standard of never taking a medicine as an adult, which undoubtedly placed a chilling effect on an individual who had a sincerely held religious belief but believed they would not qualify given this random criteria. *Id.*

1 408. It is unclear how many individuals other than Plaintiffs identified herein, who were
2 discouraged from exercising their civil rights due to the language contained in the
3 WSDOT exemption request form.

4 409. This created a chilling effect on individuals who were seeking a religious exemption
5 under the implied message that they would not qualify for a religious exemption if they
6 had ever taken any “medicine” from a doctor in their adult life.

7 410. Numerous Plaintiffs, identified *supra*, did not apply for any exemption because they
8 believed they would not qualify based on the language Defendants used in its religious
9 exemption form.

10 411. The form also did not comply with statutory exemptions permitted for vaccinations under
11 Wash. Rev. Code § 28A.210.090, which permits a “philosophical or personal objection”
12 to immunization.

13 412. The form did not comply with discrimination on the basis of Creed, as found in Wash.
14 Rev. Code 49.60 and Title VII of the Civil Rights Act of 1964.

15 413. Defendants have stated in EEOC Position Statements that they permitted other forms,
16 but this is inaccurate.

17 414. In fact, Mark Norman, Assistant Environmental Manager – Biology and Mitigation, and
18 supervisor to Plaintiff Gray, brought the problem with the form to the attention of
19 Defendant Jeff Pelton, who told Mr. Norman that employees had to fill out the form
20 provided to be considered for a religious exemption. Exhibit BZ.
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1 415. Plaintiff Gray was provided the two-question form required by Defendants and
2 immediately recognized the sham nature of the form. He brought this to the attention of
3 Defendant Millar, as well. He received no reply.

4 416. Thereafter, Plaintiff Gray was forced to utilize the two-question form, but scratched out
5 number 2 on the form, and wrote in "See Attachment 1." Exhibit CA. Mr. Gray provided
6 additional substantiation for his sincerely held belief.

7 417. Plaintiff Gray's request was denied, with Defendants stating they needed additional
8 information, but never providing any answers as to why his original request was
9 inadequate.

10 418. Based on information and belief, many employees of WSDOT, including many
11 Plaintiffs, did not apply for a religious exemption because they were forced to utilize the
12 two-question form that did not further the determination of whether they had a sincerely
13 held religious belief. The form inherently led Plaintiffs and others to believe that their
14 religious exemption would not be approved because they had taken medicine from a
15 doctor in their adult life.

16 419. Even after being forced to use the WSDOT prescribed form and answering the two yes/no
17 questions, Plaintiffs were further interrogated by Defendants demanding additional
18 information, as was done to Mr. Gray, creating a greater chilling effect on the employees'
19 rights to file a religious exemption.

20 420. Employees were either dissuaded from filing a religious exemption based on the
21 discriminatory language contained in the two-question religious exemption request form,
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1 or they gave up after the Defendants' continued demand for more data to justify a
2 religious exemption.

3 421. Plaintiff Gray was never given any legitimate reason why his initial submission on the
4 two-question form was insufficient. Nor was he ever given answers to his questions to
5 Defendant Millar regarding the sham religious request form.

6 422. Plaintiff Gray submitted a second religious exemption form because he was forced to do
7 so under threat of termination.

8 423. Plaintiff Jordan Longacre likewise was forced to use the two-question form, declined to
9 answer the second question regarding the taking of any medicine, but instead provided
10 an attachment with his personal statement and a letter from his pastor. Exhibit CB.
11 Defendants then proceeded to interrogate Mr. Longacre further, requiring more in-depth
12 and personal information, but never answering Mr. Longacre's questions about the
13 inadequacy of his previous documents.

14 424. This process by Defendants was arbitrary and harassing, as some individuals who just
15 answered the yes/no questions without any detail from their pastor or a personal
16 statement, were granted a religious exemption, while those who declined to participate
17 in the sham interrogation were punished with follow-on questioning.

18 425. Ultimately, Plaintiff Longacre's questions were never answered, and he was never even
19 told whether his religious exemption was approved when he was then sent a letter of
20 termination.

21 **Natural immunity:**

1 426. As noted *supra*, many Plaintiffs presented a positive COVID-19 antibody test and/or a
 2 positive COVID-19 test, but Defendants refused to consider this evidence of natural
 3 immunity.

4 427. A highly publicized Israeli study released in August 2021,²⁷ serves as a point in favor of
 5 accommodating exempt employees. These positive tests were historical and were
 6 presented after full recovery.

7 428. Dr. Anthony Fauci correctly stated in 2004 that “[t]he most potent vaccination is getting
 8 infected yourself.”²⁸

9 429. Defendants provided no evidence of any COVID-19 transmissions traced to any Plaintiff.

10 430. All Plaintiffs had successfully utilized PPE during the pandemic but were denied the
 11 continued use of PPE as an accommodation, without discussion.

12 431. Many of the Plaintiffs requested *Loudermill* hearings but were denied and told that a
 13 *Loudermill* was only for disciplinary terminations. Plaintiff Benjamin Wheeler asked for
 14 a *Loudermill* hearing on two separate occasions via emails to Joelle Davis and Cynthia
 15 Kent, but never received even an answer to those requests. Likewise, Plaintiffs Daniel
 16 Hjelmeseth, Bradley Sawaya and Kerry Strawn requested a *Loudermill*, as did others, but
 17 Defendants did not respond to their requests either. Mr. Sawaya also submitted an
 18 internal EEO complaint with WSF HR that went ignored and unanswered.
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 23

24 ²⁷ <https://www.medrxiv.org/content/10.1101/2021.08.24.21262415v1>

25 ²⁸ <https://www.onenewspage.com/video/20220401/14604225/Fauci-Flashback-quot-The-Most-Potent-Vaccination.htm>

1 432. *Loudermill* hearings were required as a due process protection afforded to employees to
2 present “[their] side of the story,” *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532,
3 534 (1985). They are not reserved exclusively for addressing wrongdoing allegations
4 against employees, but also against the employer, a conclusion inherent in the purpose to
5 allow employees to tell “[their] side of the story.”

6
7 433. “Finally, in those situations where the employer perceives a significant hazard in keeping
8 the employee on the job, it can avoid the problem by suspending with pay.” *Loudermill*,
9 470 U.S. at 532, 544-545.

10 **Four arbitration decisions analyzing the same accommodation process used by**
11 **Defendants found the process constitutionally violative of employees’ rights and ordered**
12 **reinstatement of the terminated employee with backpay:**

13 434. Four arbiters heard grievances filed on behalf of Washington Department of Fish and
14 Wildlife (WDFW) and Department of Revenue (DOR) employees wrongfully terminated
15 by agencies using the same procedures used by WSDOT in the instant case.

16 435. In all three arbitrations by three different arbiters, it was found that WDFW failed to find
17 a reasonable accommodation before asserting an undue hardship, had conclusions
18 unsupported by evidence to establish an undue hardship and/or violated the Proclamation
19 and Title VII.

20 436. In the DOR arbitration, the arbiter found that DOR “did not establish that it paid serious
21 attention to [employee’s] reassignment of her site visit responsibilities, and because the
22 record does not show that such reassignment [of allegedly essential job functions] would
23 have presented an undue hardship,” DOR violated the CBA and MOU.
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1 437. In the Ruthanna Shirley Arbitrator’s Decision and Award, PERC No. 134851-P-22,
2 Exhibit CC, the Arbiter Michael Anthony Marr found that, “[t]here is nothing in the
3 evidence to indicate that the Agency considered testing or any alternative
4 accommodation to vaccination.”

5
6 438. Arbiter Marr also found that the agency did not consider masks and social distancing as
7 accommodations and that “[f]ailing **to consider** available accommodations is extremely
8 concerning. It is difficult for the Agency to establish good faith when EEOC and/or CDC
9 guidance is ignored and not considered.” Exhibit CC, at 36 (emphasis in original).

10 439. Furthermore, “[t]here is nothing in the evidence to indicate that the Agency considered
11 testing or any alternative accommodation to vaccination.” *Id.* at 37.

12
13 440. Additionally, the agency “did not take this opportunity to explain with specificity,” why
14 masks and social distancing were no longer a reasonable accommodation. *Id.* at 39. “The
15 position taken by the Agency constituted a hypothetical hardship in violation of Title VII
16 because it was conclusory and unsupported by data and other statistical evidence.” *Id.* at
17 p. 40.

18 441. In the John Hone Arbitration Decision and Award, PERC No. 134845-P-22, Exhibit CD,
19 Arbiter Michael E. Cavanaugh specifically found that the Agency failed to follow the
20 interactive process and that such failure could not be excused. *Id.* at 10.

21
22 442. Arbiter Cavanaugh also rejected the Agency’s assertion that, “in effect, no inquiry into
23 an individuals’ work situation – beyond evaluating a job description – was necessary. *Id.*
24 at 10-11.

1 443. “The Department failed to afford [Mr. Hone] the individualized consideration of his
2 religious accommodation request that is required by law and by the parties’ MOU. In
3 addition, at least as applied to Mr. Hone, The Department’s *per se* rule against masking
4 and distancing as part of an appropriate religious accommodation violated the law and
5 the MOU.” *Id.* at 16.
6

7 444. In the Tyler Kave Arbitration Decision and Award, PERC No. 134848-P-22, Exhibit CE,
8 Arbiter Barbara J. Diamond found that the Agency did not provide a legal
9 accommodation process before terminating Mr. Kave. *Id.* at 25.
10

11 445. In an arbitration on behalf of LaRetta Martin, DOR, Case No. Arbiter’s X59, a terminated
12 employee suggested numerous accommodations to site visits, including allowing a co-
13 worker to perform that part of her job, which DOR refused, claiming it was an essential
14 function of her job. The arbiter found “that claim is problematic: (1) the Department
15 apparently functioned well without [site visits] for an extended period of time; (2) the
16 position description signed by [employee], her supervisor and her appointing
17 authority...mentions such travel but does not show it as essential; and...site visits do not
18 seem to satisfy any of OFM’s trigger characteristics for essential job functions...or to
19 meet the simple test that ‘An essential function is a completed task, not how that task is
20 completed.’” Exhibit CF, at 9 n. 3.
21

22 446. The DOR Arbiter also discounted the “‘customer service’ value of site visits,”
23 recognizing that “the customer was accomplished by phone and Zoom for some years
24 during the acute COVID program and nothing in the record supports the suggestion that
25
26

1 those methods are no longer satisfactory just because in person contact is now possible.”

2 *Id.* at n. 4.

3 447. “DOR seems to have given no serious consideration to that proposal [to allow a co-
4 worker to perform site visits].” *Id.* at 9.

5 448. Additionally, DOR apparently never considered whether that shifted burden could be
6 alleviated by shifting some of that other employee’s work to [the religious exempt
7 employee] in return for the inspection work.” *Id.* at 10 (citing Wash. Admin. Code § 162-
8 22-065(2)), stating, “Possible examples of reasonable accommodation may include, but
9 are not limited to: (a) Adjustments in job duties, . . . or scope of work. . .” *Id.* at 9 n.6.

10 449. The arbiter stated: “But one of the common methods of accommodation is a change in
11 rules, policy, or procedures and such an option seems to have at least deserved
12 consideration in this case...DOR’s offhand rejection of [employee’s] suggestion to
13 redistribute her site visits duties fell short of DOR’s responsibility to accommodate her
14 sincerely held religious belief....It was the Department's responsibility to seriously
15 consider that proposal, and its immediate dismissal did not satisfy that responsibility.
16 Moreover, on this record, more likely than not, if the Department had considered it, the
17 workloads could be balanced, miss Martin's suggestion was in fact a reasonable
18 accommodation.” *Id.* at 11.

19 450. The arbiter also addressed the fact that the employee did not violate any rule, yet was
20 still terminated without just cause, but “[b]ecause the just cause issue is moot in the case
21 at hand I decline to address such a fundamental issue on the basis of such a limited
22 record.” *Id.* at 12. “But in the case at hand, DOR does not allege that [the employee]

1 violated any rule or fell short of any policy. This case springs from the Governor's
2 vaccination mandate; and that mandate does not say, 'Be vaccinated or we will let you
3 go.' What it says is 'Be vaccinated unless you fall under a medical or religious
4 exemption, or we will let you go.' There is no dispute that [the employee] did not violate
5 that rule."

6
7 451. Defendants followed the same procedures and methodology used by WDFW and DOR,
8 which was found constitutionally violative of employee's rights in four separate
9 arbitrations.

10 **Defendant Kim Monroe Flaig:**

11 452. Defendant Flaig used her social media account to openly chastise, demean, and dismiss
12 those who declined the vaccine.

13
14 453. Defendant Flaig was a key player in the denial of accommodations to Plaintiffs.

15 454. In a social media post regarding an individual's outrage that some individuals were
16 offered money to take the shot while other "brave souls....stepped up in the very
17 beginning," Defendant Flaig agreed. Defendant Flaig then stated that she will get her
18 booster as soon as it is available.

19 455. Defendant Flaig states, "Just because one can lick a spoon and make it stick to their nose
20 does not mean the vax makes them [sic] magnetic. If one chooses not to do this after
21 reviewing the science, their decision but there is accountability to public health that
22 affects others. But don't refuse on fake news -or stand in line just because someone flips
23 cash your way. That's stupidity." Exhibit CG.

1 456. In a direct mocking of those who refused the vaccine and would soon be terminated,
 2 Defendant Flaig stated, “Me too. AND I plan on keeping my job! Those who choose not
 3 to vax in the name of stupidity can stand in line to get paid for their shot after they no
 4 longer have a paycheck to cash.” Exhibit CH.

5 **CAUSES OF ACTION AGAINST THE DEFENDANTS**

6 **FIRST CAUSE OF ACTION** 7 **(Violation of Washington Law Against Discrimination Perceived Physical** 8 **Disability)**

9 457. Plaintiffs here reallege the allegations set forth above in this Complaint as if fully set
 10 forth herein.

11 458. The Washington Law Against Discrimination (WLAD) prohibits discrimination in the
 12 workplace for actual or perceived disability. Wash. Rev. Code § 49.60.180. *Taylor v.*
 13 *Burlington Northern Railroad Holdings*, 193 Wash.2d 611 (2019) (en banc). WLAD’s
 14 definition of disability is broader than the definition in the ADA. *Pulcino v. Fed. Express*
 15 *Corp.*, 141 Wash.2d 629, 641 n.3 (2000).
 16

17 459. A disability is defined as “a sensory, mental, or physical impairment that ...(i) [i]s
 18 medically cognizable or diagnosable; or (ii) [e]xists as a record or history; or (iii) [i]s
 19 *perceived* to exist whether or not it exists in fact.” Wash. Rev. Code § 49.60.040(7).
 20 Disability is also an impairment that “affects one or more of the . . . body systems.” Wash.
 21 Rev. Code § 49.60.040(7)(c)(i).
 22

23 460. The legislature intended to adopt a broad and expansive definition of “disability” to
 24 protect against discrimination. *Taylor*, 193 Wash.2d at 618.
 25
 26

1 461. The EEOC has interpreted these rules to include protection for an actual or perceived
2 immunological condition.

3 462. WLAD's definition of disability is broader than the definition in the ADA. *Pulcino v.*
4 *Fed. Express Corp.*, 141 Wash.2d 629, 641 n.3 (2000).

5 463. Defendants perceived Plaintiffs as having an impairment and/or disability that identified
6 them as presenting a "significant risk of harm."

7 464. Defendants acted believing Plaintiffs have a perceived physical disability of not having
8 the best protection against COVID-19 in their bodies that conflicted with a stated job
9 requirement defined by Defendants' vaccine mandate.

10 465. Defendants were aware of this conflict but did not explore any available reasonable
11 alternatives for accommodating Plaintiffs to resolve the conflict. *Suarez v. State*, 2022
12 WL 4351109 (September 20, 2022).

13 466. Defendants refused to consider or explore accommodations and refused to balance the
14 undue hardships to the citizens of Washington State, the environment, and the mission
15 of the agency.

16 467. Defendants terminated Plaintiffs due to their perceived physical disability.

17 468. Defendants' actions caused Plaintiffs to suffer damages to be proven at trial, such actions
18 being the actual and proximate cause of those damages.

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22 **SECOND CAUSE OF ACTION**
23 **(Deprivation of Privacy, Wash. Const. art. I, Sec. 7)**

24 469. Plaintiffs here reallege the allegations set forth above in this Complaint as if fully set
25 forth herein.

1 470. No person shall be disturbed in his private affairs, or his home invaded, without authority
2 of law. Wash. Const. art. I, § 7.

3 471. This constitutional right to privacy includes the right to autonomous decision-making
4 and autonomy over one's medical care and includes the right to refuse treatment. *See,*
5 *e.g., In re Welfare of Colyer*, 99 Wash.2d 114, 119-22, 660 P.2d 738 (1983); *see also*
6 Wash. Rev. Code § 7.70.050.

7 472. Bodily autonomy is a critical component of the constitutional right of privacy.

8 473. The decision to suffer the battery of a vaccination is also a private affair which further
9 impacts a citizen's bodily integrity.

10 474. The Washington State privacy protections under art. I, § 7, are broader than the privacy
11 rights under the U.S. Constitution's Fourth Amendment, as Section 7 guarantees, "an
12 individual's right to privacy *with no express limitations.*" *Robinson v. City of Seattle*,
13 102 Wash. App. 795 (2000) (emphasis added).

14 475. Plaintiffs have the right to make the decision whether to receive a COVID-19 vaccine
15 and have the right to decide not to disclose their personal medical history – including
16 whether they have been "fully vaccinated" for COVID-19.

17 476. Despite these rights, Defendants will continue to violate the privacy rights of every
18 individual seeking employment with WSDOT.

19 477. Despite these rights, Defendants will continue to refuse reemployment to Plaintiffs.

20 478. Plaintiffs have been deprived of their rights to privacy by the actions of Defendants in
21 forcing Plaintiffs to violate their religious and/or medical freedoms or suffer loss of
22 employment and loss of pension.

1 479. The right to privacy is protected under Wash. Const. art. I, § 7, as a fundamental right
2 which can only be infringed upon by a law which satisfies a strict scrutiny analysis, that
3 is, which furthers a compelling state interest and is narrowly tailored thereto, using the
4 least restrictive means.

5
6 480. Defendants demanded termination of religious and medical objectors who did not
7 vaccinate, alleged in the interest of stopping the spread of COVID-19.

8 481. However, the vaccines did not stop infection or transmission, and both the vaccinated
9 and unvaccinated spread COVID-19.

10 482. The termination of religious and/or medical objectors did not further the alleged state
11 interest because the efficacy of the vaccines failed. Defendants knew in advance of the
12 termination that the vaccine was ineffective, but Defendants purposefully chose to
13 continue with the wrongful termination of religious and medical objectors.

14
15 483. Even if the vaccines had worked as promoted, the Defendants failed to utilize a narrowly
16 tailored method to control the spread of virus, leaping directly to termination without
17 considering lesser available means of achieving the alleged objective.

18 484. Defendants failed to utilize PPE, testing, telework, or natural immunity in stopping the
19 spread of COVID-19, and the method they relied upon – vaccination only – did nothing
20 to stop the spread of the virus, as evidenced by a “cleansed” workforce with high
21 breakthrough numbers of fully vaccinated contracting the virus.

22
23 485. Defendants’ actions fail strict scrutiny.

24 486. Defendants’ actions would fail even rational-basis review.
25
26

1 487. Additionally, Plaintiffs have been deprived of their right to privacy through the invasive
 2 nature of the religious exemption questionnaire which Defendants required them to
 3 answer.

4 488. Defendants' actions proximately caused Plaintiffs to suffer damages in amounts to be
 5 proven at trial.
 6

7 **THIRD CAUSE OF ACTION**
 8 **(Deprivation of Life, Liberty, or Property, U.S. Const. am. V., am. XIV, Wash.**
 9 **Const. art. I, Sec. 3)**

10 489. Plaintiffs here reallege the allegations set forth above in this Complaint as if fully set
 11 forth herein.

12 490. No person shall be deprived of life, liberty, or property, without due process of law. U.S.
 13 Const. ams. V, XIV; Wash. Const., art. I, § 3.

14 491. Plaintiffs suffered loss of pension rights and benefits as a direct result of the actions of
 15 Defendants.

16 492. Plaintiffs lost title to their real property due to Defendants' actions, had to relocate at
 17 considerable loss in the sale of that property, which are losses which they cannot recover.

18 493. Public employees have a property interest in their pensions, which cannot be unilaterally
 19 altered to the material disadvantage of the employee. *Eagan v. Spellman*, 90 Wash.2d
 20 248 (1978).
 21

22 494. Public employees have a property interest in their employment, cannot be terminated
 23 without "just cause," and cannot be terminated without due process, which includes a fair
 24 hearing. *Board of Regents v. Roth*, 408 U.S. at 564 (1972); *Cleveland Bd. of Educ. v.*
 25 *Loudermill*, 470 U.S. 532, 105 (1985).
 26

1 495. Plaintiffs were terminated from public employment without a hearing or other due
2 process.

3 496. The law regarding due process in employment is well established.

4 497. Defendants knew the Fourteenth Amendment prohibits government from denying an
5 employee due process.
6

7 498. Defendants' actions proximately caused Plaintiffs to suffer damages in amounts to be
8 proven at trial.

9 **FOURTH CAUSE OF ACTION**
10 **(Violation of the Equal Protection Clause of the Wash. Const. art. I, Sec. 3)**

11 499. Plaintiffs here reallege the allegations set forth above in this Complaint as if fully set
12 forth herein.

13 500. Wash. Const. art. I, § 3, states that "[n]o person shall be deprived of life, liberty, or
14 property, without due process of law."

15 501. If a law neither burdens a fundamental right nor targets a suspect class, it will be upheld
16 so long as it bears a rational relation to some legitimate end. *Romer v. Evans*, 517 U.S.
17 620, 631 (1996).
18

19 502. There was no rational relation to some legitimate government end because the action
20 taken – termination of the unvaccinated – did not further the interest of reducing the
21 spread of COVID-19 given that the vaccinated and the unvaccinated both contract and
22 transmit COVID-19.
23
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1 503. In fact, people who are vaccinated for COVID-19 are more likely to become infected
 2 with and spread COVID-19 than are people who have recovered from COVID-19 and
 3 have natural immunity.

4 504. Defendants have treated different classes of people unequally, with religious objectors
 5 suffering a greater adverse impact by the actions of Defendants.
 6

7 505. The actions of Defendants, on its face and as applied, was not rationally related to a
 8 legitimate end.

9 506. The actions of Defendant have caused, is causing, and will continue to cause irreparable
 10 harm and actual and undue hardship to Plaintiffs.

11 507. Defendants' actions caused Plaintiffs to suffer damages to be proven at trial, such actions
 12 being the actual and proximate cause of those damages.
 13

14 **FIFTH CAUSE OF ACTION**
 15 **(Deprivation of Religious Freedom, Wash. Const. art. I, Sec. 11.)**

16 508. Plaintiffs here reallege the allegations set forth above in this Complaint as if fully set
 17 forth herein.

18 509. Defendants' vaccination mandate and religious exemption questionnaire are contrary to
 19 and transgress Wash. Const. art I, § 11, which states, "Absolute freedom of conscience
 20 in all matters of religious sentiment, belief and worship, shall be guaranteed to every
 21 individual, and no one shall be molested or disturbed in person or property on account of
 22 religion. . . No religious qualification shall be required for any public office or
 23 employment."
 24

25 510. Plaintiffs' absolute right to religious freedom has been infringed.
 26

1 511. Defendants, by their conduct and words, discriminated against the Plaintiffs for acting
2 according to their conscience, guided by their religious faith, in refusing to be vaccinated.

3 512. Defendants' vaccination mandate, in conjunction with their religious exemption
4 questionnaire, by design and intent, impose a religious qualification for public
5 employment, and deny Plaintiffs' absolute freedom of conscience in all matters of
6 religious sentiment, belief and worship, and result in an unauthorized molestation or
7 disturbance of the Plaintiffs' persons and property rights on account of religion.
8

9 513. Defendants' actions proximately caused Plaintiffs to suffer damages in amounts to be
10 proven at trial.

11 **SIXTH CAUSE OF ACTION**
12 **(Wage Theft)**

13 514. Plaintiffs here reallege the allegations set forth above in this Complaint.

14 515. Defendants have, willfully and with the intent to deprive, failed to pay wages to the
15 Plaintiffs since the date of their respective terminations.

16 516. Defendants had a pre-existing duty under contract to pay Plaintiffs the specific
17 compensation as set forth in their employment contracts.

18 517. Defendants were aware at the time of termination that Plaintiffs were being treated
19 differently than secular vaccinated employees by requiring religious and medical
20 objectors to receive a vaccine to prevent infection, knowing that both the vaccinated and
21 the unvaccinated both contracted and spread the COVID-19 virus, and affirmatively
22 elected to ignore the established science.
23
24
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26

518. Defendants have authority and control over the employment status and payment of wages to Plaintiffs.

519. Plaintiffs did not knowingly submit to the deprivation of wages.

520. Defendants' actions proximately caused Plaintiffs to suffer damages in amounts to be proven at trial, including at least lost wages and lost benefits, including pensions.

521. Defendants' actions are the actual and proximate cause of Plaintiffs' damages.

522. Plaintiffs not yet reinstated are entitled to back wages, and for all Plaintiffs to double damages, costs of suit and reasonable attorney's fees. Wash. Rev. Code § 49.52.070.

SEVENTH CAUSE OF ACTION
(Breach of Contract; U.S. Const. art I, § 10, cl. 1; Wash. Const. art. I, § 23)

523. Plaintiffs here reallege the allegations set forth above in this Complaint.

524. There existed a binding contract between each Plaintiff and the Department that permitted termination only for "just cause."

525. Each Plaintiff substantially performed their obligations under this contract.

526. The Department breached its contracts with Plaintiffs by terminating them without just cause.

527. Defendants' wrongful termination of Plaintiffs was based on a new condition of employment that was not part of Plaintiffs' contract when hired.

528. A vaccine mandate is a "private, irreversible medical decision made in consultation with private medical professionals outside the federal workplace," and is not a "working condition" of employment. *Feds for Medical Freedom et al. v. Joseph Biden et al.*, No. 22-40043 (5th Cir. March 23, 2023) at 14, 28, 30.

1 529. Defendants' actions violated Plaintiffs' right to continued employment by terminating
 2 them without "just cause" and by mandating a private medical decision made outside the
 3 workplace and wrongly characterizing that private decision as a new condition of
 4 employment without consideration.

5
 6 530. Defendants' action also violated Plaintiffs' pension rights, likewise established by
 7 contract.

8 531. Defendants' actions caused a substantial change to the pension rights of Plaintiffs
 9 established by Wash. Rev. Code Title 41 *et. seq.*

10 532. Plaintiffs have suffered extraordinary financial loss because of the substantial change in
 11 their pension rights without cause.

12
 13 533. Defendants' actions proximately caused Plaintiffs to suffer damages in amounts to be
 14 proven at trial, including at least lost wages and lost pensions.

15 **EIGHTH CAUSE OF ACTION**
 16 **(Violation of the Washington Law Against Discrimination; Failure to**
 17 **Accommodate)**

18 534. Plaintiffs here reallege the allegations set forth above in this Complaint.

19 535. Each Plaintiff was found by the Department to have a sincerely held religious belief
 20 preventing vaccination and was granted an exemption, and/or was granted a medical
 21 exemption preventing vaccination due to a medical condition.

22 536. Defendants were aware of these exemptions.

23 537. Plaintiffs made repeated requests for accommodations but were shut down without
 24 discussion.

25 538. Defendants failed to consider any of the accommodations proposed by Plaintiffs.

1 539. Reassignment, as indicated by EEOC protocol, is a last resort and can only be considered
 2 *after* engaging in an interactive dialogue to identify a reasonable accommodation that
 3 does not create an undue burden. Defendants skipped this step and jumped right to
 4 reassignment.

5
 6 540. Defendants stated that reassignment was the only possible accommodation, but then
 7 almost universally denied reassignment to terminated employees regardless.²⁹

8 541. Plaintiffs were forced to either be terminated or take a vaccine in direct violation of their
 9 sincerely held religious beliefs in order to feed their families.

10 542. Strict scrutiny applies where fundamental rights are concerned.

11 543. “The risk posed by an unvaccinated, exempt employee is the same regardless of the
 12 reason that the employee obtained the exemption. In other words, an employee exempt
 13 from the Mandate for medical reasons presents the same risk of COVID-19 transmission
 14 in a high-risk role as does an employee exemption from the Mandate for religious
 15 reasons.... Accordingly, giving priority consideration to employees in high-risk roles for
 16 secular exemptions over those with religious exemptions is likely to fail strict scrutiny.”
 17 *UnivySCC v. Cody*, 2022 WL 2357068 (N.D. Cal. Jun. 30, 2022).

18
 19 544. Whereas the mandated vaccine does not prevent infection or transmission, Defendants’
 20 actions, *and the continuance thereof*, are arbitrary and capricious and fail even a rational
 21 basis review.
 22

23
 24
 25 ²⁹ OFM Policy is that “[e]mployees being reassigned to a position that has a lower salary range are not
 26 considered ‘reassignments’ they are voluntary demotions....” Exhibit AC. A voluntary demotion as threat to
 termination is not a valid accommodation to a religious or medical objector.

1 545. Defendants' actions proximately caused Plaintiffs to suffer damages in amounts to be
2 proven at trial.

3
4 **NINTH CAUSE OF ACTION**
(Violation of the Washington Law Against Discrimination; Disparate Impact)

5 546. Plaintiffs here reallege the allegations set forth above in this Complaint.

6 547. To the extent that Defendants' policy is facially neutral, it falls more harshly upon those
7 within a protected class.

8 548. The Plaintiffs have been damaged by the disparate impact of the Defendants' policy.

9 549. Defendants' actions proximately caused Plaintiffs to suffer damages in amounts to be
10 proven at trial.

11
12 **TENTH CAUSE OF ACTION**
13 **(42 U.S.C. § 1983 – Violation of the First Amendment of the United States**
Constitution; Free Exercise)

14 550. Plaintiffs here reallege the allegations set forth above in this Complaint.

15 551. The First Amendment of the U.S. Constitution provides that: "Congress shall make no
16 law respecting an establishment of religion or prohibiting the free exercise thereof." This
17 clause has been incorporated against the states. *Cantwell v. Connecticut*, 310 U.S. 296
18 (1940).

19
20 552. Courts should not inquire into the validity or plausibility of a person's beliefs; instead
21 the task is to determine whether "the beliefs professed []are sincerely held and whether
22 they are, in [a believer's] own scheme of things, religious." *United States v. Seeger*, 380
23 U.S. 163, 185 (1965).

1 553. Plaintiffs’ sincerely held religious beliefs that prohibit them from taking the COVID-19
2 vaccinations have been unconstitutionally burdened by Defendants. Plaintiffs’
3 accommodations were universally denied.

4 554. Defendants have pitted Plaintiffs’ consciences against their ability to work. The Free
5 Exercise Clause of the First Amendment protects against “indirect coercion or penalties
6 on the free exercise of religion, not just outright prohibitions.” *Carson v. Makin*, 142 S.
7 Ct. 1987 (2022) (quoting *Lyng v. Northwest Indian Cemetery Protective Assn.*, 485 U.S.
8 439, 450 (1988)). “In particular, we have repeatedly held that a State violates the Free
9 Exercise Clause when it excludes religious observers from otherwise available public
10 benefits.” *Id.*

11 555. Defendants openly stated that religious accommodations would be denied, but secular
12 (i.e., medical) accommodations were allowed. Here, with regard to regulating the
13 conduct of its secular and religious citizens, the government holds the same interest in
14 preventing disease. Further, the secular and religious activities at issue are not only
15 comparable, but they are also exactly the same, seeking exemption from compulsory
16 vaccination.

17 556. A law “lacks general applicability if it prohibits religious conduct while permitting
18 secular conduct that undermines the government's asserted interests in a similar way.
19 *Fulton v. City of Philadelphia, Pa.*, 141 S. Ct. 1868, 1877 (2021). While defendants may
20 have a general healthcare interest in preventing the spread of disease, its interest is not
21 so extraordinary as to prohibit an accommodation for religious reasons, which poses a
22 similar contagion hazard as a hypothetical medical accommodation.

1 557. Government regulations “are not neutral and generally applicable, and therefore trigger
2 strict scrutiny under the free exercise clause of the First Amendment, whenever they treat
3 any comparable secular activity more favorably than religious exercise.” *Tandon v.*
4 *Newsome*, 141 S. Ct. 1294, 1296 (2021).

5
6 558. Defendants have instituted a system that includes 2 levels of personalized discretionary
7 review. The Defendants have delegated private healthcare providers discretion to
8 determine what broad variety of circumstances are eligible for a medical exemption, and
9 which are not. Acting on behalf of the state, these physicians conduct an individualized
10 assessment of each potential medical exemption. If and when the medical exemption
11 form is signed by a physician, it is then submitted to Defendants to enter yet another
12 discretionary process of affording an accommodation.

13
14 559. Defendants’ vaccination policy thus fails the general applicability test on additional,
15 alternative grounds because the medical exemption system provides for individualized
16 discretionary review. “The creation of a formal mechanism for granting exceptions
17 renders a policy not generally applicable....” *Fulton*, at 1879.

18 560. All the acts of Defendants were conducted by them under color and pretense of the
19 statutes, regulations, customs, policies, and/or usages of the State of Washington and the
20 Washington Department of Transportation.

21
22 561. Defendants knew that the First Amendment prohibits governmental officials from
23 demonstrating hostility to religion or prohibiting the free exercise thereof.
24
25
26

1 562. Defendants acted with willful malice, and/or intentionally and in gross disregard of
 2 Plaintiffs' constitutional rights, and/or in reckless disregard of Plaintiffs' constitutional
 3 rights.

4 563. As a direct and proximate result of Defendants' actions, Plaintiffs have been deprived of
 5 their constitutional rights to the free exercise of religion and to be free from governmental
 6 hostility directed at their religion and have been denied their rights to due process and
 7 equal protection under the law.
 8

9 564. Defendant's actions proximately caused Plaintiffs to suffer damages in amounts to be
 10 proven at trial.

11 **ELEVENTH CAUSE OF ACTION**
 12 **(Violation of Right to be Free from Arbitrary and Capricious Action)**

13 565. The Plaintiffs here reallege the allegations set forth above in this Complaint.

14 566. The Plaintiffs have a "fundamental right" "to be free from arbitrary and capricious
 15 government action. *Pierce Cnty. Sheriff v. Civ. Serv. Comm'n of Pierce Cnty.*, 98
 16 Wash.2d 690, 693–94 (1983).
 17

18 567. In light of the CDC's latest guidance, and the City of Seattle's similarly revised guidance,
 19 and/or with the current knowledge that the vaccines do not prevent transmission, the
 20 "vaccinate or terminate" policy at issue in this case is arbitrary and capricious.

21 568. The Plaintiffs have each been adversely impacted by the Defendants' arbitrary and
 22 capricious conduct.

23 569. The Plaintiffs have been damaged in an amount to be proved at trial.
 24

25 **TWELVTH CAUSE OF ACTION**
 26 **(Public Policy Tort Claim Against Religious Discrimination)**

1 570. The Plaintiffs here reallege the allegations set forth above in this Complaint.

2 571. The Plaintiffs hold sincere religious beliefs.

3 572. Defendants acknowledged and accepted the sincerity of the religious beliefs of each
4 Plaintiff.

5 573. Plaintiffs were each terminated for practicing their religion, which is a legal right of each
6 Plaintiff.

7 574. Plaintiffs were terminated in retaliation for exercising their religious beliefs.

8 575. Plaintiffs each had employment agreements that they could only be terminated for just
9 cause.

10 576. Plaintiffs' terminations violate a precept of public policy that prohibits employment
11 discrimination without just cause.

12 577. Plaintiffs each had employment agreements containing express or implied provisions that
13 they would be employed so long as they satisfactorily performed the services expected
14 of them, protecting them from discharge for reasons other than good faith dissatisfaction
15 by the employer.

16 578. Each of the Plaintiffs have a tort action for damages to redress injuries and damages
17 caused by their termination and are entitled to judgment therefor.

18
19
20
21 **THIRTEENTH CAUSE OF ACTION**
22 **(Violation of the "Takings Clause"; U.S. Constitution Amendment V; Washington**
23 **Constitution Art. I, § 16)**

24 579. The Plaintiffs here reallege the allegations set forth above in this Complaint.

25 580. Both the United States and the Washington Constitutions prohibit the taking of private
26 property for public use without just compensation. U.S. Const. amend. V; Wash. Const.

art. I, § 16; *see Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528, 536-37 (2005) (characterizing the takings clause as placing a *condition* on the exercise of the power to take private property).

581. Plaintiffs each were deprived of wages, pension rights, and other contractual benefits of employment by the wrongful actions of Defendants.

582. “A regulation that is otherwise a valid exercise of police power may go ‘too far’ in its impact on a property owner as to constitute a taking, requiring compensation.” *Instacart v. City of Seattle*, No. 99771-3 at 27-28 (quoting *Chong Yim v. City of Seattle*, 194 Wn.2d 651, 658-59 (2019) (quoting *Pa. Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922), *Chevron*, 544 U.S. at 543 (holding that an inquiry into a regulation’s validity is “logically prior to and distinct from the question whether a regulation effects a taking, for the Takings Clause presupposes that the government has acted in pursuit of a valid public purpose.”))).

583. Intangible property rights, including valid contracts, are protected by the takings clause. *Id.*

584. Plaintiffs each had an employment contract with the Defendants that constitutes property for the purposes of the takings clause.

585. Each of the Plaintiffs have a claim for damages to redress injuries and damages caused by their termination the taking of their property and are entitled to judgment therefor.

FOURTEENTH CAUSE OF ACTION

(Violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution)

1 586. Plaintiffs here reallege the allegations set forth above in this Complaint as if fully set
2 forth herein.

3 587. The Fourteenth Amendment to the U.S. Constitution states that “[n]o State shall make or
4 enforce any law which shall abridge the privileges or immunities of citizens of the United
5 States; nor shall any State deprive any person of life, liberty, or property, without due
6 process of law; nor deny to any person within its jurisdiction the equal protection of the
7 laws.”
8

9 588. All of the acts of Defendants, their officers, agents, servants, and employees, as alleged
10 herein, were conducted by the Defendants under color and pretense of the statutes,
11 regulations, customs, policies and/or usages of the State of Washington and the
12 Washington State Department of Transportation.
13

14 589. Defendants’ policies, as administratively construed and applied against Plaintiffs granted
15 Defendants unfettered discretion to disregard the process they created for determining
16 whether a religious accommodation would be granted and, therefore, abridged Plaintiffs’
17 rights to due process as guaranteed by the Fourteenth Amendment to the United States
18 Constitution.
19

20 590. The actions of Defendant have caused, are causing, and will continue to cause irreparable
21 harm and actual and undue hardship to Plaintiffs.

22 591. Defendants’ actions caused Plaintiffs to suffer damages to be proven at trial, such actions
23 being the actual and proximate cause of those damages.
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25
26

V. **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, and each of them, pray for the following relief against the Defendants:

1. Judgment against all Defendants on all claims.
2. Money judgment for back pay and front pay, loss of benefits, and loss of pension rights, for those Plaintiffs who were terminated or forced to quit.
3. Money judgment for back pay, loss of benefits, and loss of pension rights, for those two reinstated Plaintiffs, to the extent they are reinstated.
4. Double damages for lost wages pursuant to Wash. Rev. Code § 49.52.070.
5. Money judgment for all Plaintiffs pursuant to the infringement upon their constitutional and statutory rights.
6. Attorney fees as authorized by State and Federal statutes.
7. Such other and further relief that is just and equitable.

DATED this 9th day of May 2023.

ARNOLD & JACOBOWITZ PLLC

s/ Nathan J. Arnold

Nathan J. Arnold, WSBA #45356
8201 164th Avenue NE, Suite 200
Redmond, WA 98052
(206) 799-4221
Nathan@CAJLawyers.com
Counsel for Plaintiffs